159 US 510

TRANSCRIPT OF RECORD.

159-510

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 633.

CHARLES THIEDE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE TERRITORY OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED MAY 27, 1895.

(15922.)

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a Supreme court of Utah. File No. 565.

THE PEOPLE, ETC., RESPT.,
vs.
CHARLES THIEDE, APP'L'T.

Filed & transmitted Jan. 14, 1895. David C. Dunbar, clerk. By Geo. D. Loomis, deputy. Filed in the Supreme Court Jan. 14, 1895. At Salt Lake City, Utah. Joseph P. Bache, clerk.

a1 Territory of Utah, in the third judicial district court.

THE PEOPLE OF THE TERRITORY OF UTAH
against
CHARLES THIEDE.

Charles Thiede is accused by the grand jury of this court, by this indictment, of the crime of murder in the first degree, committed as follows: The said Charles Thiede, on the thirtieth day of April, A. D. eighteen hundred and ninety-four, at the county of Salt Lake, in said Territory of Utah, upon one Mary Thiede, wilfully, deliberately, premeditatedly, and of his malice aforethought, and with the specific intent to take the life of the said Mary Thiede, an assault did make with a certain knife or other sharp instrument, a more particular description of which the grand jurors are unable to give, which he, the said Charles Thiede, then and there held in his hand, and then and there wilfully, feloniously, deliberately, premeditatedly, and of his malice aforethought, and with the specific intent to take the life of the said Mary Thiede, did strike, thrust, and cut, with said knife or other sharp instrument, upon and into the throat of her, the said Mary Thiede, thereby inflicting upon the said Mary Thiede a mortal wound, of which mortal wound the said Mary Thiede did then and there die; and so the grand jurors aforesaid, upon their oaths, do say that said Charles Thiede, in manner and form aforesaid, wilfully, feloniously, deliberately, premeditatedly, and of his malice aforethought, her, the said Mary Thiede, did then and there kill and murder, contrary to the form of the statutes of said Territory in such case made and provided, and against the peace and dignity of the people aforesaid.

M. B. SOWLES,
Foreman of Grand Jury.
J. W. JUDD,
U. S. Att'y.
By J. T. RICHARDS,
Asst. U. S. Att'y.

(Indorsed:) Witnesses: Jacob Lanenberger, Mary Lanenberger, Josephine Soderholm, Vrelond Soderholm, Mary Anderson, Richard Ellery, Annie Thiede, John Montgomery, jr., William McQueen.

=1159. Third district court. The People of the Territory of Utah vs. Charles Thiede. Indictment for murder in the first degree. A true bill. M. B. Sowles, foreman of grand jury. Presented in open court, by the foreman of the grand jury, in the presence of the grand jury, and filed

by me this 24th day of September, 1894. David C. Dunbar, clerk, by Geo. D. Loomis, deputy clerk. J. W. Judd, U. S. att'y, by J. T. Richards, asst. U. S. att'y. Sept. 26/94. Arraigned Sept. 28/94, to plead. Sept. 28/94. Defendant enters plea of not guilty.

a2 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE, ETC.,
vs.
CHARLES THIEDE. } Indictment for murder in first degree.

Upon defendant's affidavit of impecuniosity, and with consent of the prosecuting attorney, it is ordered that the witnesses for the defense herein be subpœnaed, paid per diem and mileage, at the expense of the Territory of Utah.

Dated October 6th, 1894.

a3 Territory of Utah, in the third judicial district court.

THE PEOPLE OF THE TERRITORY OF UTAH
against
CHARLES THIEDE.

Affidavit.

TERRITORY OF UTAH,
County of Salt Lake, ss:

Charles Thiede, being duly sworn, on his oath deposes and says: I am the defendant in the above-entitled action; I desire to procure the attendance of the following-named witnesses at my trial to testify in my behalf.

That I am impecunious, and unable to pay the per diem and mileage of said witnesses.

That the evidence of said witnesses is material for my defense, as I am advised by my counsel.

That I cannot safely proceed to trial without said witnesses.

The names of said witnesses are as follows, viz: James Bloom, Lauretta Bloom, Mrs. Minnie Schmidt, Martin Pearson, Louise Pearson, Robert Kaiser, S. A. Ahlberg, John Anderson, and A. V. Miller.

CHARLES THIEDE.

Subscribed and sworn to before me this 5th day of September, A. D. 1894.
[SEAL.] JAMES W. CHERRY,
Notary Public.

My term expires Oct. 12, 1895.

(Endorsed:) Title cause. Affidavit. Service of copy hereof acknowledged Oct. 5, 1894. A. Howat, U. S. dist. atty. Filed Oct. 6, 1894. David C. Dunbar, clerk. Cherry & Cherry, attys. for deft.

a4 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY *vs.* CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

This cause coming on regularly for trial and the defendant, Charles Thiede, being present, and his attorneys, Messrs. Cherry & Cherry, and John W. Judd, esq., United States attorney, and Andrew Howat, assistant United States attorney, being present, and Geo. L. Nye, associated as counsel with prosecution, and all parties being ready for trial, the impaneling of a jury to try this cause is proceeded with, and the following persons are called and sworn upon their voir dire, to wit:

Wm. J. King.
I. N. Dunyan.
David Thomas, challenged by defendant and peremptorily excused.
J. H. Milller, challenged for cause and excused by the court.
A. R. Carter.
Charles H. Spencer, challenged for cause and excused by the court.
Samuel E. Allen.
Peter M. Robertson, challenged for cause and excused by the court.
J. G. Smith, challenged by the prosecution peremptorily and excused.
Daniel Letham, challenged by the defendant peremptorily and excused.
John Gillespie.
James McGhie, challenged for cause and excused by the court.
Thomas E. Harris, challenged by the defendant and peremptorily excused.
Charles S. Birkner, " " " prosecution " " "
Edward Norton, challenged for cause and excused by the court.
Clint I Moon, " " " " " " " "
Phil Kipple, " " " " " " " "
N. A. Sherman.
Geo. H. Brown, challenged by the defendant peremptorily and excused.
D. Austin, challenged for cause and excused by the court.
W. H. Evans.
A. W. Caine, challenged for cause and excused by the court.
B. T. Thornberg.
a5 Louis Gronosky.
H. L. Driver, challenged for cause and excused by the court.
O. R. Ostler.
Fred Titt, challenged by the prosecution peremtorily and excused.
James Eager, challenged for cause and excused by the court.
Jesse Harmon, challenged for cause and excused by the court.
R. T. Burton, jr.

H. J. Faust, challenged for cause and excused by the court; and Wm. J. King, I. N. Dunyan, A. R. Carter, Samuel E. Allen, John Gillespie, N. A. Sherman, W. H. Evans, B. T. Thornberg, Louis Gronosky, O. R. Ostler, R. T. Burton, jr., are kept together in the custody of a sworn bailiff (having been passed for cause and not challenged); and the further impaneling of the jury and trial is adjourned until to-morrow morning; and it is further ordered that the United States marshal of Utah arrange

for the feeding and lodging of the jury herein impaneled, during the trial of the within case, at the expense of the people.

Dated October 10th, 1894.

a6 In the district court for the third judicial district of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH } Indictment for murder
vs. } in the first degree.
CHARLES THIEDE, DEFENDANT. }

The defendant and the attorneys for the respective parties, and the jurors, Wm. J. King, A. R. Carter, I. N. Dunyan, Samuel E. Allen, John Gillespie, N. A. Sherman, W. H. Evans, B. T. Thornberg, Louis Gronosky, O. R. Ostler, and Robert T. Burton, jr., who were yesterday passed for cause and placed in custody of the sworn bailiffs, are present, and all parties being ready, the empaneling of the jury is proceeded with as follows: Geo. Swan, challenged by the defendant peremptorily and excused. And a special venire having been heretofore issued as consented to by the defendant, and being now returned by the United States marshal, who returns that he has served the same by summoning the number of persons therein required to appear and be before the court to serve as petit jurors of this court in this case herein as may be required, and the persons so served are present as summoned, and are called and sworn upon their voir dire as follows, to wit:

E. E. Ellison, challenged for cause and excused by the court.
M. M. Whitesides, " " " " " " " "
W. V. Haight, " " " " " " " "
Rufus Adams, " " " " " " " "
J. H. Hamilton, " " " " " " " "

C. S. Favour, passed for cause, deft. excepts, and the defendant peremptorily challenges R. T. Burton, jr., O. R. Ostler, John Gillespie, Samuel E. Allen, I. N. Dunyan, and they are excused, and the
a7 prosecution waives his peremptory challenges from No. 5 to No. 13, inclusive.

Jed Stringham, challenged for cause and excused by the court.
W. W. Streeper, " " " " " " " "
Hyrum Ford, " " " " " " " "

Robert L. Anderson, challenged by the defendant peremptorily and excused.

Thomas A. Dunshee, challenged for cause and excused by the court.
C. Wanless, " " " " " " " "

E. W. Layton.

Levy Taylor, jr., challenged for cause and excused by the court.

A. B. Porter, challenged by defendant peremptorily and excused.

H. B. Parrish, challenged for cause and excused by the court.
J. H. Bonnemort, " " " " " " " "
James A. Brown, " " " " " " " "

Joseph Smith, Centerville, challenged by defendant peremptorily and excused.

B. T. Barber, challenged for cause and excused by the court.

S. D. Colbrown.

B. S. Young, challenged for cause and excused by the court.
W. C. Mayfield, challenged for cause and excused by the court.
W. J. Parkin.
Wm. Moss, challenged for cause and excused by the court.
Philando Hatch, " " " " " " "
W. E. Wylie, challenged by defendant peremptorily and excused.
David Ledbetter, challenged by prosecution " " "
Ed. A. Stead, challenged for cause and excused by the court.
S. S. Worthington, challenged by defendant peremptorily and excused.
C. H. Rampton.
James Day.

a8 And the following twelve named jurors having been examined upon their voir dire, and further examined by the respective counsel herein as to their competency to sit as trial jurors herein, and having been passed for cause, and not having been challenged peremptorily by either the prosecution or defence, are impaneled and sworn to try the case, to wit: William J. King, A. R. Carter, N. A. Sherman, W. H. Evans, B. T. Thornberg, Louis Gronosky, C. S. Favour, S. D. Colbrown, W. J. Parkin, C. H. Rampton, James Day, and E. W. Layton; and the said jurors are placed in custody of the sworn bailiff's, Mr. B. Y. Golding and N. Gulbranson, and the further trial of the case is adjourned until to-morrow morning at 10 o'clock.

Dated October 11, 1894.

a9 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES THIEDE, DEFENDANT.
} Indictment for murder in the first degree.

The attorney for the prosecution, and the defendant with his attorneys and the jury impaneled herein are all present, and being ready the trial herein is resumed. The indictment is read, and the defendant's plea of not guilty as charged therein is stated to the jury by the clerk. Upon motion of Cherry & Cherry, defendant's attorneys herein, and with consent of Mr. A. Howat, asst. prosecutor, it is ordered that all witnesses in this case for either side be, and the same are hereby, excluded from the court room until such time as they may be called to testify; and C. M. Nelson and A. H. Steel, with consent of the defendant, are sworn as interpreters for the court in behalf of the witnesses, Charles Soderholm, Mrs. Soderholm, and Victoria Soderholm, who are sworn and testify for the prosecution. Fritz Lummetzeh, with consent of defendant, is now sworn as interpreter for the court in behalf of the witness Jacob Lowenburg, who is sworn and testifies for the prosecution, and it appearing to the court and counsel that the interpreter, Fritz Lunmetzeh, is not satisfactory, and the defendant consenting thereto, Louis Gronosky, one of the jurors impaneled herein, is sworn as interpreter for the witness Jacob Lowenburg, and the trial herein is now adjourned until to-morrow morning.

Dated October 12th, 1894.

a10 In the district court for the third judicial district of Utah Territory.

THE PEOPLE OF UTAH TERRITORY *vs.* CHARLES THIEDE. } Indictment for murder in the first degree.

The attorney for the prosecution, and the defendant with his attorneys, and the jurors impaneled herein are present, and all being ready the trial herein is resumed; and with consent of defendant, Louis Gronosky is sworn as interpreter for witness, Mary Lowenbourg, who is sworn and testifies as a witness for the prosecution; and Miss Minnie Noble and Doctor Benedict are sworn and testify as witnesses for the prosecution; and the prosecution moves the court to permit the jury to visit the scene of the homicide, and the defendant opposes the application, and the court allows the application and permits the jury to visit the scene of the homicide in charge of sworn bailiffs in a body, and by consent of the defendant and the prosecution the court appoints A. H. Steele, esq., to accompany the jury and point out to the jury different objects and points, and the said Steele is sworn to carry out the instructions of the court and to take charge of the jury, and the court states that it does not object to the defendant accompanying the jury to visit the scene of the homicide if he so desires; and the jury having been to the scene of the homicide and returned into court, the court, upon the consent of the defendant and prosecution, orders that the jury upon to-morrow, which is Sunday, may, in charge of sworn bailiffs, visit the Sanitarium for the purpose of taking a bath, but that they must not bathe in a pool with anyone else; and the further trial is adjourned until Monday morning at 10 o'clock, Oct. 15, 1894.

Dated October 13th, 1894.

a11 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF THE TERRITORY OF UTAH *vs.* CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

The attorney for the prosecution, and the defendant and his attorneys, and the jurors impaneled to try the case are present, and the trial herein is resumed. Jacob Lowenbourg is recalled by the prosecution, H. J. Striker, Dr. Benedict, James Gilbert, Lillie Birch, Dr. Worthington, Dr. Richards, Wm. McQueen, are sworn and testify as witnesses for the prosecution, and A. H. Steele is sworn as court interpreter for the witness, Mary Anderson, by consent of defendant and all interested parties; and the said Mary Anderson is sworn and testifies as a witness for the prosecution, and the further trial is adjourned until to-morrow morning at 10 o'clock.

Dated October 15th, A. D. 1894.

a12 In the district court for the third judicial district court of Utah Territory.

THE PEOPLE OF UTAH TERRITORY } Indictment for murder in the
vs. } first degree.
CHARLES THIEDE, DEFENDANT. }

The attorney for the prosecution, and the defendant with his attorneys, and the jurors impaneled to try the case are all present and all ready, and the trial herein is resumed. H. J. Striker, Mary Anderson, Geo. Wright, James Gilbert, Lillie Birch, Dr. Worthington, and Dr. Richards, Mr. Montgomery, L. L. Archer, Dr. W. Farriby, and H. W. Wyler, are sworn and testify for the prosecution, and J. P. Mahan is sworn as another bailiff to take charge of the jury, and the further trial is adjourned until to-morrow morning at 10 o'clock.

Dated October 16th, 1894.

a13 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY } Indictment for murder in the
vs. } first degree.
CHARLES THIEDE, DEFENDANT. }

The attorney for the prosecution, and the defendant with his attorneys, and the jurors impaneled are all present and ready, and the trial is resumed. Eva Burg, John Anderson, and W. S. Hill are sworn, and testify as witnesses for the prosecution, and the prosecution rests. And A. D. Miller, Robert Kaiser, Martin Pearson, Louis Pearson, James Bloom, Mrs. Bloom, Minnie Smith, Fritz Reipen, Charles Sharp, Richard Elroy, Andrew Sjobloom, Franz Moedl, S. A. Ahlberg, are sworn and testify as witnesses for the defense, and the further trial is adjourned until to-morrow morning at 10 o'clock.

Dated October 17th, A. D. 1894.

a14 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY } Indictment for murder in the
vs. } first degree.
CHARLES THIEDE, DEFENDANT. }

The attorneys for the prosecution, Mr. Howat and Mr. Nye, and the defendant with his attorneys, and the jurors impaneled in the case are all present, and all parties being ready, the trial herein resum*y*d, and John Trusk, John Johnson, C. S. Birkner, W. A. Sidney, Annie Thiede, and Charles Thiede, the defendant, are sworn, and testify as witnesses for the defense, and the further trial is continued until to-morrow morning at 10 o'clock.

Dated October 18th, 1894.

a15 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY *vs.* CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

The attorneys for the prosecution, and the defendant with his attorneys, and the jurors impaneled herein are all present and ready, and the trial herein is resumed. D. N. Straup is sworn and testifies as a witness for the defense, and the defense rests; and C. H. Birkner, Doctor Farribee, Miss Noble, Wm. McQueen, Mrs. Sjoderholm, and Annie Thiede are called by the prosecution, and testify in rebuttal, and the evidence closes, whereupon the argument of the case is opened by Mr. Geo. L. Nye for the prosecution, who is followed by Mr. J. W. Cherry for the defense, and the further trial is adjourned until to-morrow at 10 o'clock a. m.

Dated October 19th, 1894.

a16 In the third district court of Utah Territory.

THE PEOPLE *against* CHARLES THIEDE, DEFENDANT.

Comes now the defendant and requests the court to instruct the jury as follows.

CHERRY & CHERRY,
Attorneys for Defendant.

Refused as a whole except as given.

G. W. BARTCH, *Judge.*

Dated October 19th, 1894.

1. The jury are instructed that the defendant is presumed to be innocent of the crime charged until he is proven to be guilty beyond a reasonable doubt by competent evidence, and this presum'tion continues throughout the trial until overthrown by competent evidence which convinces the minds of the jury beyond a reasonable doubt.

2. The jury are instructed that the law raises no presumption against the defendant, but every presumption of law is in favor of his innocence, and every material fact necessary to constitute the crime charged in the indictment must be proved beyond a reasonable doubt; and if the jury entertain any reasonable doubt upon any single fact or element necessary to constitute the crime, it is your duty to give the defendant the benefit of such doubt and acquit him.

3. The defendant is entitled to every presumption of innocence compatible with the evidence in the case, and if it is possible to account for the death of the deceased upon any reason'ble hypothesis other than
a17 the guilt of the defendant, then it is your duty to so account for it and find the defendant not guilty.

4. The jury are instructed that in criminal cases, even where the evidence is so strong that it demonstrates the probability of the guilt of the

accused, still, if it fails to establish his guilt beyond a reasonable doubt, then it would be your duty to acquit the defendant. You are instructed that mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment, nor is it sufficient that upon the doctrine of chances, it is more probable that the defendant is guilty. To warrant a conviction of the defendant he must be proven to be guilty so clearly and conclusively that there is no reasonable theory upon which he can be innocent, when all the evidence in the case is considered together.

5. The court instructs the jury that it is not enough that you firmly believe from the evidence that it is more probable that the defendant killed the deceased, as charged in the indictment, than it is that she died from some other cause, but you must be satisfied beyond a reasonable doubt from all the evidence that he is guilty as charged in the indictment, or else it is your sworn duty to find him not guilty.

The court instructs the jury that if there is any other reasonable hypothesis arising out of the evidence given in this case, except the one that the defendant unlawfully killed the deceased, then the defendant is entitled to the benefit of such hypothesis and he ought to be acquitted.

a18 6. You are instructed that if any one of the jury, after having considered all of the evidence in this case and after having consulted with his fellow jurymen, should entertain a reasonable doubt of the defendant's guilt, or after such consideration and consultation should entertain a reasonable doubt as to whether or not the defendant was present at the time and place of the commission of the alleged homicide, then the jury cannot find the defendant guilty.

Given in general charge.

7. A reasonable doubt is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge, that is, to a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

8. A reasonable doubt, within the meaning of the law, is such a doubt as would cause a reasonable, prudent, and considerate man, in the graver and more important affairs of life, to pause and hesitate before acting upon the truth of the matter charged or alleged.

9. The jury are instructed that the policy of our law deems it better that many guilty persons should escape rather than one innocent person should be convicted and punished, so that, unless the jury, after a careful and thorough consideration of all the evidence in this case, can say and

a19 feel that every material allegation in the indictment is proved beyond a reasonable doubt, the jury should find the defendant not guilty.

10. Where a criminal charge is sought to be proved by circumstantial evidence, the proof must not only be direct, but also consistent with the guilt of the accused, and inconsistent with any other rational conclusion, and such as to leave no reasonable doubt in the minds of the jury of the defendant's guilt.

11. In criminal cases where the prosecution rely upon circumstantial evidence alone for conviction, it is not enough that all the circumstances

are consistent with and point to the defendant's guilt; and, in this case, if all the facts and circumstances relied on by the people for a conviction can be reasonably accounted for upon any theory consistent with the innocence of the defendant, then the jury should acquit him.

12. The jury are instructed that circumstantial evidence may constitute proof sufficient to authorize a conviction for homicide even where it involves the life of the person charged, but it should always be received and weighed with great caution, and should only be accepted as conclusive where it excludes all hypotheses inconsistent with the theory of defendant's guilt and establishes it to a reasonable certainty.

a20 13. If there is one single fact proved to the satisfaction of the jury, by a preponderance of the evidence, which is inconsistent with the defendant's guilt, that is sufficient to raise a reasonable doubt and the jury should acquit the defendant.

14. The jury are instructed that where the evidence fails to show any motive to commit the crime charged on the part of the accused, that is a circumstance in favor of his innocence. And in this case if the jury find, upon a careful examination of all the evidence, that it fails to show any motive on the part of the defendant to commit the crime charged against him, then this is a circumstance which the jury ought to consider in connection with all the other evidence in the case in making up their verdict.

15. The jury are instructed that where evidence is given tending to show admissions made by the defendant in a criminal case, the defendant is entitled to have the whole of the statement or admissions heard and considered by the jury. But the jury are not obliged to believe or disbelieve all of such statement; they may disregard such parts of it, if any, as are inconsistent with the other testimony, or which the jury believe from the facts or circumstances proved on the trial are untrue.

Given in the general charge.

16. The jury are instructed that the confessions of a prisoner out of court are of a doubtful species of evidence and should be acted upon by the jury with great caution, and unless they are supported by some other evidence tending to show that the prisoner committed the crime, they are rarely sufficient to warrant a conviction.

a21 17. The court instructs the jury that the evidence of intoxication at the time of the confession, if any confession was made, is an objection to the weight and not to the competency of such confession; if you believe from the evidence that the defendant was so much under the influence of liquor as not to understand what he was confessing, then you should disregard the confession altogether. The fact that the defendant was under the influence of liquor, if such a fact existed, is to be considered in determining the weight of the evidence of a confession. Confusion, produced by intoxication, is a fact for the jury, tending to discredit the confession.

18. The law not only presumes that every person is innocent until he is proven to be guilty, but the law also presumes that a person has a good character and reputation until the contrary is shown by the evidence; and the jury have no right to consider the omission on the part of the defendant to introduce evidence of good character as a circumstance against him, or as tending to show his guilt in this case.

Given in the general charge.

19. You are instructed that you should fairly and impartially consider this case in the light of all the evidence, and you should not allow any rumor or expressions of opinion you may have heard or read out of court to influence your verdict or prevent you from discharging your duty to the public or to the defendant.

Given in the general charge.

20. The jury are instructed that a reasonable doubt of the defendant's guilt may arise from the consideration of all of the evidence, any
a22 facts or circumstances connected with the trial, your knowledge and observation of the common affairs of life, or it may arise after fairly considering the arguments of counsel; and the court instructs you that should you entertain such a doubt, arising as has been stated, then you should acquit the defendant.

21. The jury are instructed that marital discord and quarrels are relevant to prove motive in cases of marital homicide, but as instances of such quarrels are very numerous, generally expending their force in words, such proof is entitled to little weight, unless connected in some way with the fatal wound.

22. If the jury find from the evidence that the accused, at or about the time of his arrest, made false and contradictory statements, calculated to excite suspicion against him, still, these statements, if they can reasonably be attributed to any other motive or cause than that of a consciousness of guilt of the crime charged in the indictment and a desire to conceal it, then they should be so attributed and explained, and in such case they should not be regarded as any evidence of guilt of the crime charged.

Given in substance in the general charge.

(Endorsed:) Title cause. Instructions requested by defendant. Filed October 19th, 1894. David C. Dunbar, clerk. By Geo. D. Loomis, deputy.

a23 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY *vs.* CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

The attorney for the prosecution, and the defendant with his attorneys, and the jurors impaneled herein, each and all being present, the trial herein is resumed, and the case is further argued to the jury by Mr. Cherry for the defense, and Mr. Howat closes the argument for the prosecution, and the court instructs the jury, and the jury retire to consider of their verdict.

Ordered, that court take a recess until to-morrow morning at 10 o'clock for the purpose of receiving a verdict in the case of The People vs. Charles Thiede, upon which the jury is now deliberating.

Dated October 20th, 1894.

a24 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY } Indictment for murder in the
vs. first degree.
CHARLES THIEDE, DEFENDANT. }

The jury impaneled herein now return into open court, and all being present, through their foreman say they find and present the following verdict as follows, to wit: "We, the jurors in the above case, find the defendant, Charles Thiede, guilty of murder in the first degree as charged in the indictment.

A. R. CARTER, *Foreman.*"

And at the request of the defense the jury is polled, and each juror says that this is his verdict, and the jury is discharged from the case.

Dated October 21st, 1894.

a25 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY } Indictment for murder in the
vs. first degree.
CHARLES THIEDE, DEFENDANT. }

The defendant and his attorney being present, Mr. A. Howat, assistant prosecuting attorney for the United States of America, moves the court to set a day and time for pronouncing judgment and passing sentence upon the defendant, Charles Thiede, and the court having listened to the objections of defendant's counsel, and fully considered, orders that the day for hearing the defendant's motion for a new trial and the passing of sentence upon the said defendant be fixed as November 2nd, A. D. 1894, at the hour of 10 o'clock in the morning, and the defendant is committed to the custody of the United States marshal of Utah Territory.

Dated October 22nd, 1894.

a26 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY } Indictment for murder in the
vs. first degree.
CHARLES THIEDE, DEFENDANT. }

The defendant with his attorneys and the attorney for the prosecution being present, and all ready, the defendant's motion for a new trial and the motion in arrest of judgment is argued, and, being submitted, is taken under advisement by the court.

Dated November 2nd, 1894.

a27 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

Judgment and sentence of the court.

Now, upon this fifth day of November, A. D. 1894, the defendant being present in court in person, and by his attorneys, Messrs. Cherry & Cherry, and the plaintiff by Andrew Howat, assistant United States district attorney, and the court having fully considered the defendant's motion heretofore made for a new trial, and the defendant's motion for arrest of judgment, and being fully advised in the premises, it is by the court ordered that said motions and each of them be, and the same are hereby, overruled. Exception taken. Whereupon Andrew Howat, esq., assistant United States district attorney, moved the court for judgment upon the verdict, and thereupon the court asked the defendant, Charles Thiede, to stand up, and the defendant having stood up in open court, the court inquired of him whether he had anything to say why sentence of the court should not be pronounced against him, to which the defendant replied that he was innocent of the crime of which he was charged and that he had nothing further to say. Whereupon the court said to the defendant, "You were indicted by the grand jury of this judicial district of the crime of murder in the first degree, and you have been tried by a jury in the manner provided by law and have been found guilty of the crime. The penalty affixed by the statute for the crime of which you have been convicted is death, and must be inflicted by hanging you by the
a28 neck until dead, or by shooting you, at your election. Which mode of death do you elect shall be inflicted upon you? Whereupon the defendant said that he refused to make his election as to the manner of inflicting the death penalty, but left it to the court. Whereupon the court pronounced judgment upon the defendant as follows: It is the judgment of the court that you, Charles Thiede, be taken from hence to some place of confinement until Tuesday, the 18th day of December, 1894, and between the hours of 10 o'clock in the forenoon and two o'clock in the afternoon of said last-named day, in the yard of the jail or place where you are confined, or in some other private place in this judicial district, you be hanged by the neck until dead.

Dated November 5th, 1894.

a29 In the district court for the third judicial district of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

Certificate of the judge of the third district court.

An appeal to the Supreme Court having been allowed in the above-entitled action on the application of the defendant, and the court being of

the opinion that there is a probable cause for such appeal, it is ordered, at the request of the defendant, that the appeal shall operate as a stay of proceedings on the judgment until said appeal is disposed of.

Witness my hand this 5th day of November, 1894.

G. W. BARTCH,
Judge of the Third District Court of the Territory of Utah.

The above certificate has been signed by me with the understanding that it is for the purpose only of giving the appellant the benefit of his appeal.

G. W. BARTCH, *Judge.*

NOV. 5, 1894.

a30 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY
vs.
CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

Upon motion of Messrs. Cherry & Cherry, attorneys for the d'fendant, and the court having fully considered, it is ordered that thirty days' time be, and the same is hereby, granted the defendant to prepare and serve and file bill of exceptions on appeal herein, and upon the defendant's affidavit of impecuniosity and the consent of the attorney for the prosecution, it is further ordered that the official court stenographer transcribe the testimony and record in and upon the within case at the expense of the people of Utah Territory.

Dated November 5th, 1894.

a31 In the district court for the third judicial district of Utah Territory, Salt Lake County.

THE PEOPLE OF UTAH TERRITORY
vs.
CHARLES THIEDE, DEFENDANT. } Indictment for murder in the first degree.

Upon application of Cherry & Cherry, attorneys for the defendant, it is hereby ordered that the time in which to prepare and file a bill of exceptions on behalf of said defendant on appeal be, and the same is hereby, extended until and including the 15th day of December, 1894.

GEO. W. BARTCH, *Judge.*

Dated November 28th, 1894.

a32 In the district court for the third judicial district of Utah Territory.

THE PEOPLE OF UTAH TERRITORY
vs.
CHARLES THIEDE, DEFENDANT. } Murder in the first degree.

Upon motion of Cherry & Cherry, attorneys for the defendant herein, it is ordered that the defendant have until December 24th, inclusive, to file bill of exceptions herein.

Dated December 21st, 1894.

a33 In the third district court of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH *against* CHARLES THIEDE, DEFENDANT. } Indictment for murder.

Notice of appeal.

To Andrew Howat, Assistant U. S. District Attorney for Utah:

You will please take notice that the defendant hereby appeals to the supreme court of the Territory of Utah, from the order of the third district court of Utah Territory overruling defendant's motion for a new trial, from the order overruling defendant's motion in arrest of judgment, and from the judgment rendered in the above-entitled cause, and from the whole thereof.

CHERRY & CHERRY,
Defendant's Attorneys.

Service of above notice admitted this 3rd day of January, 1895.

ANDREW HOWAT,
Atty. for Pff.

(Endorsed:) Title cause. Notice of appeal. Filed January 4, 1895. David C. Dunbar, clerk.

a34 TERRITORY OF UTAH,
County of Salt Lake, ss:

I, David C. Dunbar, clerk of the third judicial district court of Utah Territory, do hereby certify that the foregoing is a full, true, and correct copy of the original indictment, affidavit of impecuniosity, order for subpœnaing witnesses for deft., minutes of trial, minutes of challenge, instructions requested by defendant, minutes of judgment, minutes on motion new trial and for arrest of judgment, order overrul' motion new trial, and sentence, certificate probable cause of appeal, orders extending time to file bill exceptions, and notice of appeal, and bill of exceptions as settled by the court and allowed in the action therein entitled, filed in my office.

Witness my hand and the seal of said court at Salt Lake City this 12th day of January, A. D. 1895.

[SEAL.]

DAVID C. DUNBAR,
Clerk.
By GEO. D. LOOMIS,
Deputy Clerk.

1 Filed Dec. 24, 1894. David C. Dunbar, clerk. By Geo. D. Loomis, deputy.

In the third district court of the Territory of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH *against* CHARLES THIEDE, DEFENDANT. } Indictment for murder.

Bill of exceptions.

Be it remembered, that this cause came on to be set for trial on the 2nd day of October, 1894, whereupon the court fixed the 10th day of October, 1894, at which time said trial should be had.

Whereupon the defendant's counsel in open court requested that the counsel for the people should furnish the defendant with the names of all the witnesses that the people would call in the trial of said cause before the trial begun, the counsel for the defendant stating that he did not claim it as a matter of right, but as a matter of favor, and thought it was only fair to the defendant that he should be so advised; and thereupon Andrew Howat, assistant U. S. attorney, who had charge of said cause on behalf of the people, stated that he was not aware of any witnesses that he would call on behalf of the people except those whose names were upon the back of the indictment, except Dr. Benedict, Dr. Worthington, Dr. Richards, and W. E. Ferrebee; that he had no acquaintance whatever with the case or what the several witnesses would testify to, and had no more information in regard to the matter that had the defendant's counsel, but stated that he would, as soon as he was informed of the name of
2 any witness whom he desired to call in addition to those whose names were upon the back of the indictment, he would inform the defendant's counsel.

That on the 8th day of October, 1894, said Andrew Howat furnished the defendant with the following list of witnesses that he expected to call in addition to those whose names were upon the back of the indictment: Dr. Ferrebee, Minnie Noble, H. Weiler, Dr. Benedict, Dr. Richards, John Trusk, and John Johnson, and no other names of witnesses were furnished to the defendant's counsel before the trial had begun.

That on the 10th day of October, 1894, the said cause came on for trial before G. W. Bartch, district judge, at which time the defendant objected to going to trial at said time, for the reason that the evidence taken before Grant H. Smith, justice of the peace, at the preliminary examination of this cause, had not been transcribed, certified, and filed with the clerk of this court, as provided by law; it being admitted in open court that such preliminary examination was held, and that the evidence there taken had not been transcribed, certified, and filed in this court. That the testimony before Grant H. Smith, justice of the peace, had been taken in shorthand by Fred McGurrin by direction of the said justice, and that he was asked by the prosecuting attorney about ten days before the trial to transcribe the same, and that he declined to do so, and stated in open court that the reason he did not transcribe the same was because he had transcribed notes in a similar case and had been refused payment both by the county and Territory, and that he had brought suit against the county in the district court and the court held that he had no cause of action against the county therefor, and he thereupon brought suit against the Territory in
3 the district court and the court held that he had no cause of action against the Territory therefor, and that the only reason he had for not transcribing the notes was that he would not be paid for the same. Said objection was overruled by the court, to which ruling the defendant duly excepted.

And thereupon the court proceeded to empannel a jury to try said cause, and Thomas E. Harris, R. T. Burton, jr., C. S. Favour, and Joseph

Smith, among others, were examined upon their voir dire as follows, to wit:

4 WEDNESDAY, 2 *p. m.*

THOMAS E. HARRIS, sworn as a juror, examined by Judge Cherry as follows:

Q. Where do you live?
A. Salt Lake City.
Q. How long have you resided here?
A. Nearly six years.
Q. Where did you reside before coming here?
A. Boulder, Col.
Q. How long have you lived there?
A. Some 18 years.
Q. What State are you a native of?
A. Ohio.
Q. What is your occupation?
A. At present I am a juryman and running for office.
Q. What office?
A. Selectman.
Q. Have you been engaged in any business for the last year?
A. I was keeping a hotel at the Copper Plant last winter for some six months.
Q. You were formerly coroner of this county?
A. Yes, sir.
Q. Have you ever heard of this case before you were called to the jury box?
A. I have. I think I saw the first account in the Tribune.
Q. Did you read any subsequent accounts?
A. Not that I know of. I don't remember reading anything since that.
Q. When you say the first account do you mean the first statement of the homicide, or the proceedings that were published in the Tribune concerning the coroner's inquest?
A. The first. I didn't read the coroner's inquest that I know of.
Q. Didn't read that?
A. I don't think I did.
Q. Did you read any of the proceedings that took place in the police court and were published in the papers?
A. I don't think I did.
5 Q. Do you read the papers regularly?
A. I do.
Q. Take a daily paper?
A. Yes, sir.
Q. You have no recollection of reading the evidence as taken?
A. No, sir; I am very sure I didn't.
Q. Did you ever talk with anyone concerning the facts or circumstances of this case?
A. No, sir; I never did.
Q. Never heard anyone talk or express an opinion in your presence?
A. Yes, sir; I have.

Q. Have you ever expressed an opinion as to the guilt or innocence of the defendant?

A. I don't think I have.

Q. Do you know whether you have or not?

A. Well, I may say I know I have not.

Q. Have you at this time any opinion or impression in your mind as to the guilt or innocence of the defendant?

A. I have an impression, of course, a newspaper impression; that is, the impression I would form from reading the newspaper.

Q. Was that impression strengthened any by the conversations you have heard, or expressions of opinion you have heard others make?

A. I don't know as it is; I don't think it is.

Q. You believed the statement in the Tribune to be a correct statement of the affair, did you, at the time you read it?

A. Yes, to a certain extent. There might be some deviations from correctness.

Q. But substantially?

A. Substantially I took it as a correct statement.

Q. Whatever impression or opinion you received was gained from reading that paper?

6 A. Yes, sir; I might say I have the impression, but have forgotten the evidence and what was said about the affair at the time.

Q. Whatever was said left an impression in your mind?

A. Yes.

Q. Is that impression in your mind yet?

A. I must say it is.

Q. Is it of such a character that it would require some evidence to remove it from your mind?

A. It might require some; of course that was all one-sided?

Q. All that you heard was on one side?

A. All that I heard was on one side.

Q. You think it would require some evidence to get that out of your mind?

A. It certainly would.

Q. You understand the law to be that every defendant in a criminal action is presumed to be innocent until he is proved guilty?

A. Yes, sir.

Q. And that he is entitled to that presumption when he enters upon the trial?

A. Yes, sir.

Q. Could you fully give him that presumption with the impression and opinion you have already existing in your mind?

A. I could.

Q. Then it would not require any evidence to remove the impression you have in your mind, would it?

A. To answer that to the contrary would be to contradict my other statement.

Q. You have already answered it would take some evidence to remove it?

A. Yes, sir.

Q. Now, then, if you have an opinion and an impression——

Judge HOWAT. He didn't say he had an opinion, he said he had an impression.

7 That impression of feeling that you have, or conviction or opinion, whatever it is, that is in your mind, I understand you to say, would require some evidence to remove, to change it?

A. Yes, sir.

Q. Something different from what you have heard?

A. Yes, sir.

The COURT. If he has an opinion let him state so.

WITNESS. Nothing more than an impression; I don't think I have an opinion.

Judge CHERRY. Do you mean to say you have no fixed opinion?

A. No fixed opinion; nothing but what evidence might change.

Q. But you have an impression?

A. I have an impression.

Q. That impression is strong enough so that it would require evidence to remove it?

A. Some evidence; yes, sir.

Q. Then, with that impression unremoved in your mind, could you feel in your mind at this moment that you could give the defendant fully the benefit of that presumption of innocence?

A. I could.

Q. Notwithstanding that impression?

A. Yes, sir.

Q. And notwithstanding the fact it would take some evidence to remove it?

A. Yes, sir.

Judge Cherry challenges the juror for cause.

Judge HOWAT. I understand you to say that what you have formed in your mind is not an opinion but a mere impression from the casual reading of the article in the newspaper?

A. That is it.

Q. Did you read the article carefully for the purpose of deter-

8 mining whether this defendant had committed the crime or not, or was it a mere casual impression from a casual reading of the article?

A. I didn't read it very carefully, and not with the intention of forming an impression or opinion.

Q. Do you feel and believe that you could lay aside the impression that you have and enter upon this trial giving the defendant the presumption of his being innocent, hear the testimony, and upon that alone, disregarding any impression you have now, determine the guilt or innocence of the defendant?

A. I could in this or any other case.

The COURT. Did you ever express an opinion in this case?

A. I don't think I have.

Q. Have you an opinion in it now?

A. I have not.

Q. This is simply an impression you have formed from reading the account in the newspapers?

A. Yes, sir.

Q. And not of forming any opinion at the time?

A. I didn't form any opinion at the time that I have any recollection of at all. If I have it has entirely gone from my mind.

Q. Do you feel now and know that notwithstanding the reading you have done in the newspapers in regard to this case and anything you have heard or any impression that you have in your mind, that you can lay that all aside and if you are allowed to remain as a juror in this case render a fair and impartial verdict uninfluenced by bias or prejudice or by anything you have read or heard in this case?

A. I could.

The COURT. The challenge should be denied.

(Exception.)

Q. Mr. Harris, do you remember now any of the circumstances as given by the paper at the time alleged?

A. I do not.

9 Q. The whole matter has passed out of your mind?

A. When I came into court to-day I couldn't state in what manner the person was killed.

Q. Can you remember what you read in the paper?

A. I cannot.

Q. The substance of it?

A. I cannot.

Q. Have you ever been connected with a murder trial as a witness or juror?

A. No further than as a coroner's juror and coroner.

Q. I mean in a court of record.

A. No, sir.

Q. How long did you act as coroner?

A. About two years and five months.

Q. Were you ever a police officer of any kind?

A. No, sir.

Q. Ever act as a detective?

A. No, sir.

Q. Are you a member of any secret organization?

A. I am.

Q. What?

A. That is the secret.

Q. It is so secret you don't wish to tell what it is?

A. Yes, sir.

Q. Are you a member of any church organization?

A. Two I suppose. I am a member of one at any rate. I am an Episcopalian.

Q. A married man?

A. Yes, sir.

Q. Do you know this defendant?

A. No, sir.

Q. Do you know of him by reputation before this occurrence?

A. No, sir.

Q. Have you heard anything since the occurrence respecting his reputation, either for or against?

A. I cannot say that I have. I think I heard something at the time outside of what I saw in the paper, some remarks probably.

10 Q. Did the remarks you heard come from some reputable person?

A. I have no recollection.

Q. Was it in connection with the circumstances of the homocide?

A. I don't think it was.

Q. Entirely separate from that?

A. Probably.

Q. No connection with the homocide?

A. I think not.

Q. Was the question of the homocide talked about at the same time?

A. I don't think it was; it might have been, though; I gave little thought to it.

Q. Did the persons you talked with express any opinions themselves as to the guilt or innocence of the defendant?

A. I couldn't say. I have heard remarks as to the guilt or innocence several times, but I couldn't tell on what occasion.

Q. That is the very question, whether they did express any opinion?

A. I couldn't tell whether I had heard any expressions.

Q. Did you ever hear any expressions from thos' you talked with as to the guilt or innocence of the defendant?

A. I have.

Q. Were those expressions from person' in whom you had confidence?

A. I haven't the slightest idea who they were.

Q. Did you acquiesce or agree with them in their expressions or conclusions?

A. I have never expressed an opinion.

Q. Just answer the question.

A. That is taxing my memory a little too far; I don't remember these things.

Challenge renewed and denied.

The COURT. From the questions that have now been asked you,

11 has it refreshed your recollection in any way that anything you have heard will influence you in your verdict?

A. No, sir; I have not.

(Challenge denied. Exception.)

12 R. T. BURTON, jr., sworn.

Examined by J. W. CHERRY:

Q. Where do you live?

A. Salt Lake City.

Q. How long have you lived here?

A. Over 41 years.

Q. Did you hear a statement made of the character of this case?

A. Yes, sir.

Q. How long have you lived here?

A. Over 41 years.

Q. Are you a native?

A. Yes, sir.

Q. What is your occupation?

A. Real estate and mining broker.

Q. Are you acquainted with the defendant?
A. No, sir.
Q. Did you ever hear of him before the first of May of this year?
A. Yes, sir.
Q. Knew him by reputation?
A. I have heard of the party; I assessed through that part of the country several different years, and I remember I met the party in that capacity at one time, that is all.
Q. Did you ever hear anything about this case?
A. Yes, sir.
Q. Through what medium?
A. I read the Tribune account of it—that is, a portion of the account. I was not here all of the time. I was out of the city a portion of the time during April and May.
Q. Are you a regular reader of the Tribune?
A. Generally.
13 Q. Did the account that you read purport to give the facts of the preliminary examination?
A. No, sir.
Q. Of the coroner's inquest?
A. No, sir.
Q. Was it just a general statement?
A. I think it was a general statement at the time the defendant was arrested.
Q. Did you ever hear anything about this case through any other medium?
A. No, sir.
Q. Never talked to any one about it?
A. No, sir.
Q. Are you a married man?
A. I am.
Q. Have a family?
A. Yes, sir.
Q. Do they reside here?
A. In the city.
Q. You never talked with any of them about the case?
A. No, sir.
Q. From what you read in the papers have you formed or expressed any opinion in respect to the guilt or innocence of the defendant?
A. I don't think I ever expressed an opinion in regard to it. I may have formed an opinion at the time.
Q. You think you did form an opinion at the time?
A. I think so.
Q. You believed the report in the paper substantially?
A. That is a leading question; I never read enough of the evidence to form an opinion as to the guilt or innocence of the defendant.
Q. You say you think you did form an opinion?
A. A man certainly when he hears or reads anything has an opinion to a certain extent.
14 Q. It left an impression on your mind?
A. Certainly.

Q. You have that impression still?

A. I have heard of nothing to the contrary.

Q. Nothing has occurred to change it?

A. No, sir.

Q. It would require something to change it?

A. I suppose it would take evidence to remove the opinion.

Juror challenged for cause.

Judge HOWAT. Did that opinion you formed go as to the question of the guilt or innocence of the defendant, or was it simply an opinion as to what occurred?

A. Just an opinion as to the occurrence; that is all.

Q. Did you have an opinion at that time as to whether the defendant was guilty of the crime or not?

A. No, sir.

Q. And you have no such opinion now as to whether he is guilty or not?

A. No, sir.

Q. Have you any bias or prejudice against the defendant or in his favor arising from what you read in the newspaper?

A. I have not.

Q. I understand that your opinion does not involve the question of the defendant's guilt or innocence.

A. No, sir.

Q. Could you, as a juror, entirely disregard anything you read in the paper, or any impression or opinion formed from it, and determine the question of the guilt or innocence of the defendant upon the evidence that would be introduced, and upon that alone?

A. I think so.

Challenge denied by Judge Howat.

Judge CHERRY. Did the statement in the paper which you read express any opinion as to the defendant's guilt or innocence?

A. It did not, as near as I remember.

Q. Did it purport to give any of the circumstances surrounding the transaction?

A. It gave some of the circumstances.

Q. And you say you had a faint opinion or impression at that time as to the guilt or innocence of the defendant?

A. Not any opinion as to the guilt or innocence of the party at that time.

Q. You say your opinion was slight?

A. A man has a certain opinion when he reads a paper account, as I stated; I only saw a portion of the account.

Q. You say your opinion was only with reference to the fact the transaction had taken place?

A. In that regard; there was no fixed opinion in regard to the guilt or innocence of the defendant.

The COURT. Have you any such opinion now?

A. No, sir.

Q. Do you feel that what you have heard or read about this case would influence your verdict if you were sworn as a juror in this case?

A. I don't think it would.

Q. Do you know whether it would or not?
A. No, sir; it would not.
The COURT. The challenge should be refused.
(Defendant excepts.)

16 R. T. BURTON, jr.

By Judge CHERRY:

Q. Were you ever connected in any capacity with a murder trial before?
A. No, sir.
Q. Never as a witness or juror in any such case?
A. I have been subpœn'ed a time or two on a special venire, but never served as a juror.
Q. Do you ever hold a position as a peace officer?
A. I held the position of constable at one time, worked in the sheriff's office.
Q. Are you acquainted with Sheriff McQueen?
A. Yes, sir.
Q. How long have you known him?
A. For several years; I can't tell exactly.
Q. Intimately acquainted with him?
A. I know him pretty intimately.
Q. Have you ever worked in his office?
A. No, sir.
Q. Are you friendly with him?
A. Yes, sir.
Q. Are you acquainted with Deputy Marshal Montgomery?
A. Yes, sir.
Q. How long have you known him?
A. Well, I have known Montgomery I think slightly since 1989 or 1890, I can't remember which. I think Montgomery was in the real estate business here during 1889, 1890, and 1891.
Q. Did you ever talk with either of those gentlemen about this case?
A. No, sir.
Q. Did you ever hear them talk about it?
A. I did not.
Q. Did you ever hear anybody talk about this case?
A. I have heard the matter mentioned, that is all.

17 Q. Never heard any expression as to the guilt or innocence of the defendant?
A. No answer.
Q. Do you belong to any secret organization?
A. Red Men.
Q. The Tuscaroras?
A. No, sir.
Q. Do you belong to any church organization?
A. No, sir.
Q. If the fact should develop in evidence in this case that the defendant was engaged in the saloon business, would that fact create any bias or prejudice in your mind against him?
A. None at all.
Passed for cause.

Judge HOWAT. Have you any scruples against the infliction of the death penalty as a punishment for crime?

A. Not if the evidence justifies it.

Q. Do you believe that the death penalty is a proper punishment for murder in the first degree?

A. It depends on how aggravated a case it was.

Q. You have no scruples in what you believe to be a proper case?

A. None at all.

Q. Have you any scruples against finding a party charged with a serious crime and inflicting the penalty if the evidence is only circumstantial evidence, no matter how strongly it may point to the defendant's guilt?

A. Not at all.

Judge HOWAT. Pass for cause.

(Judge Cherry renews his challenge for cause.)

(Challenge overruled. Exception taken.)

(Mr. Brown excused by the defendant; 4th peremptory.)

18 C. S. FAVOUR, sworn as a juror.

Examined by Judge CHERRY:

Q. You know the nature of this case?

A. Yes, sir.

Q. You have heard my statement?

A. Yes, sir.

Q. Did you ever hear of this case before you were examined as a juror?

A. Yes, sir.

Q. Through what medium?

A. Read it in the newspapers.

Q. Did you ever hear any conversation or get any information about the case outside of reading it in the papers?

A. I had a conversation with one man about it.

Q. With only one person?

A. It might have been mentioned by other parties, but I have this one person partocularly in mind.

19 Q. In your conversation with the party was there any reference made by either party as to the facts or circumstances or details of the case?

A. There was an opinion expressed by the other party.

Q. Anyone who pretended to know anything about the case from their own knowledge, or was their opinion expressed?

A. I think it was simply their opinion.

Q. You don't know whether they knew anything about the case or not?

A. No, sir.

Q. You also read it in the paper?

A. Yes, sir.

Q. What papers did you read it in?

A. I don't remember; I think it might have been the Tribune or Herald.

Q. You read the daily papers, do you, of the city?

A. Generally.

Q. Pretty regularly?

A. Not every day.

Q. Did you read what purported to be the proceedings held before the coroner's inquest?

A. I think I did.

Q. Did you read any evidence and what proceedings were held before the committing magistrate in the police court?

A. I don't remember whether I did or not; I know I read one or two accounts of it.

Q. Did you read any subsequent accounts or allusions made to the case or to the defendant since that time?

A. I don't think I have; if I have, it has passed out of my mind.

Q. Did you ever read any reference to this case in any way in a paper called the Argus, a weekly paper here?

A. No, sir.

20 Q. I will ask you if from what you read and from the conversation you have heard in reference to this case, whether or not you have formed or expressed any opinion or impression as to the guilt or innocence of the defendant?

A. I certainly received an impression; I wouldn't say whether I had a decided opinion or not. I always give some latitude to all newspaper reports. I can't read anything without having certainly some impression from it.

Q. I presume you had an impression or opinion as to the fact that a homicide had occurred?

A. Yes, sir.

Q. And that it took place at a certain time and in a certain locality? I am asking now if you had any opinion or impression particularly as to the guilt or innocence of the defendant?

A. I did, sir; I had an impression, as I said.

Q. Was it a strong impression?

A. Yes, sir.

Q. Does that impression exist in your mind at this time?

A. Yes, sir.

Q. There has been nothing that you have heard or read that has changed or removed that impression?

A. No, sir.

Q. It would require some evidence different from what you heard, would it not, to change that opinion or that impression?

A. I suppose it would. Of course I always go by the evidence, whatever it is, and am open to conviction.

Q. Is your mind now entirely free from such an opinion or conclusion that you could accord to the defendant a full presumption of innocence in entering upon this trial?

A. Yes, sir.

21 Q. You could feel when you enter the jury box that he was an innocent man so far as your present state of mind is concerned?

A. As I stated, I have still those impressions, but I should enter the jury box with the supposition that he was innocent. I would have to, of course.

Q. In other words, you would endeavor to do your whole duty as a juror?

A. Yes, sir.

Q. And would endeavor to regard your oath as a juror should you be selected as a juror; but do you feel that your mind would not be influenced in any degree by the impression and by the opinion that may have settled in your mind in reference to this case?

A. Yes, sir; I would endeavor to feel so.

Q. But now would it require some evidence, in your judgment, to remove any former impression that you have received in regard to the guilt or innocence of the defendant?

A. Yes, sir; I stated that I have an impression, and it would take some evidence to remove it, but I would enter the jury box, I hope, unbiassed. Of course I would try to.

Q. Are you a married man?

A. No, sir.

Q. What is your business?

A. Solicitor, and engaged with a portrait artist here for a number of years.

Q. How long have you lived in Utah?

A. Between five and six years.

Q. Where were you from before you came to Utah?

A. Originally, Massachusetts. I came directly from Nebraska here.

22 Q. Native of Massachusetts?

A. Yes, sir.

Q. Are you acquainted with the defendant?

A. No, sir.

Q. Did you know him by reputation before this occurrence?

A. No, sir.

Q. Would the fact, if it should appear in evidence, that the defendant at the time of this alleged homocide was engaged in retailing liquor as a saloon-keeper, would that fact tend to bias or prejudice your mind against him in any degree?

A. Not in the case. I have some opinion of the man according to his occupation generally.

Q. Would the fact that a man is what is commonly known as a saloon-keeper or brewer, would that fact have any influence in your mind in determining his guilt or innocence on a criminal charge?

A. No, sir.

Q. Would it have any weight or influence on your mind which would affect his credibility as a witness?

A. No, sir.

Q. Would you believe him as a witness as readily as you would a man engaged in any other calling?

A. Yes, sir.

Q. Are you what is commonly termed a teetotaler?

A. No, sir.

Q. Have you ever been connected with a murder trial either as a witness or juror?

A. Yes, sir.

Q. Where?

A. In this court, in the case of Harry Hammond.

Q. Were you one of the jurors in that case?

A. Yes, sir.

Q. Have you ever been a peace officer of any kind or a detective?

A. No, sir.

23 (Juror challenged for cause.)

Judge HOWAT. You say you could lay aside whatever impression you have in the matter, and hear the testimony in this case and determine the guilt or innocence of the defendant entirely upon the evidence?

A. Yes, sir.

Q. You have no doubt about that?

A. No, sir.

Q. You say what you read in the newspapers gave you an impression?

A. Yes, sir.

Q. But you could lay that aside and hear and determine the case impartially?

A. Yes, sir.

Q. Do you think that any impression you have formed from reading in the newspapers about this case would affect your verdict in this case?

A. No, sir.

The COURT. Have you any fixed opinion in your mind now?

A. I have a fixed impression. I wouldn't want to express a decided opinion.

Q. Have you formed a decided opinion?

A. No, sir.

Q. In regard to the guilt or innocence of the defendant?

A. Of course I took the newspaper reports, and, as I say, I give some latitude to all newspaper reports.

Q. Did you form your impression from the newspaper report?

A. Yes, sir.

Q. Do you feel you could lay aside any impression you have formed from the newspaper reports or otherwise, and enter the jury box, if you were sworn to try this case, and try it fairly and impartially upon the evidence as presented on the trial without any prejudice or bias against the defendant?

A. Yes, sir.

24 The COURT. The challenge should be denied.

(Exception.)

Judge HOWAT. Have you any scruples against the infliction of the death penalty as a punishment for crime?

A. No, sir.

Q. Do you believe that death is a proper punishment for murder in the first degree?

A. Yes, sir.

(No challenge for cause.)

Judge HOWAT. We waive our peremptory.

Judge Cherry excuses Mr. Ostler.

25 JOSEPH SMITH, sworn.

Examined by Judge CHERRY.

Q. Have you heard the evidence of this nature of this case?

A. Yes, sir.

Q. Where do you live?
A. Centerville, Davis County.
Q. What is your business?
A. Farming, principally.
Q. You are a married man?
A. Yes, sir.
Q. Reside with your family?
A. Yes, sir.
Q. Did you ever hear of this case before you were summoned on the jury?
A. Yes, sir.
Q. By what means did you hear of it?
A. From a conversation.
Q. When was that conversation, about?
A. I can't state the day of the month, but I know it was the
26 day after the execution of Davis. That brings it to mind.
Q. Sometime within the last month?
A. Yes, sir.
Q. Who was your conversation with?
A. A young man of this city, Charles Lutch, 21st ward.
Q. And the conversation related to this case?
A. It was spoken of in a general way; the other case brought it up.
Q. Is that the only information you had on the subject of this case?
A. Until the time I was summoned as a juror.
Q. You never read any account in the papers?
A. No, sir.
Q. Did you read the Salt Lake papers?
A. Yes, sir; I am quite confident I read nothing in regard to this case.
Q. You have no recollection of reading it?
A. I have no recollection.
Q. What papers do you read?
A. I have read for the past year the Deseret Semiweekly News.
Q. And you don't remember reading it?
A. I have no recollection of it.
Q. No recollection of talking about the case until a few weeks ago?
A. The day I mentioned.
Q. In the conversation you had with that party did you discuss any of the circumstances, facts, or surroundings?
A. No, sir.
Q. From what was said at that time did you form or express an opinion in regard to the guilt or innocence of the defendant?
A. None whatever.
Q. Have none now?
A. No, sir.
Q. Have formed no impression or opinion since you have been attending court?
A. No, sir.
27 Q. Have you talked to anyone since you came to Salt Lake City about this case?
A. Only in a general way.
Q. Nothing was said in reference to the merits of the case or circumstances?

A. No, sir.
Q. Or any of the details?
A. No, sir.
Q. Did you know the defendant before the transaction took place?
A. No, sir.
Q. Have you heard anything about him in any way since?
A. No, sir.
Q. Have you ever been connected with a murder trial before, either as a witness or juror?
A. No, sir.
Q. Did you have any connection, either in person or through a friend, with the so-called industrial army organized last spring?
A. No, sir.
Q. Did the movement have your aid or sympathy in any way?
A. No, sir.
Q. Do you belong to any secret organization?
A. No, sir.
Q. Any church?
A. Mormon Church.
Q. Ever a police officer, deputy marshal, sheriff, justice of the peace, or detective?
A. No, sir.
Q. Would the fact, if it should appear in evidence, that the defendant was engaged in the business of a saloon keeper at the time or this occurrence and prior thereto have any tendency to bias or prejudice your mind against him?
A. I hardly know how to answer that question, but would say that I have not that respect or regard for that class of men that I have for men of other occupations generally as a class.
28 Q. It might have some influence in your mind?
A. I don't think it would, but that is my feeling.
Q. Would it have any weight in your mind as to his credibility as a witness if he should go on the witness stand?
A. I think it would.
Q. Do you have some prejudice against that occupation?
A. My experience with men of that kind—yes, I think it would.
Q. Are you acquainted with Sheriff McQueen?
A. No, sir.
Q. Or Montgomery?
A. No, sir.
Q. The fact that you entertain some prejudice toward a saloon keeper, do you think that fact might have some influence in your mind in passing upon the case if it should turn out that he had been a saloon keeper, and was one, and upon his testimony?
A. I think it might have some weight.
Q. It would be prejudicial to the party who was a saloon keeper, would it?
A. Yes, sir; as a witness.
Q. Your feelings would be against him, not in favor of him?
A. As a witness; yes, sir.
(Challenge for bias and prejudice.)

Judge HOWAT. You stated that any feeling you might have against a saloon keeper would not influence your verdict in this case; that you would not allow it to influence your verdict in determining whether he was guilty or innocent?

A. No, sir.

Q. But it might affect the credit you would give his testimony?

A. Yes, sir.

29 Q. His occupation?

A. Yes, sir.

Q. The same as any other witness's occupation might?

A. Yes, sir.

The COURT. Your opinion, then, that you have stated, if any, exists against the business?

A. Yes, sir; against the business generally.

Q. Would you have any such prejudice against the individual?

A. No, sir; none whatever.

Q. Would you allow that to influence you in any way, if such person should happen to be a defendant, in passing upon his innocence or guilt?

A. No, sir.

Q. You think you could pass upon that the same as you would upon any other person?

A. Yes, sir.

(Challenge denied. Exception by Judge Cherry.)

Q. (By Judge HOWAT). Have you any scruples against the infliction of the death penalty as a punishment for crime?

A.

(Objection, as unfair and improper.)

The COURT. Counsel may ascertain what the scruples are if he confines himself to the statute.

Q. Do you believe death is a proper punishment for the crime of murder in the first degree?

A. Yes, sir.

(Objection. Objection overruled. Exception.)

Judge HOWAT. I have a right to a peremptory challenge, and may ask what questions I please.

The COURT. On that point he may exercise his right. I overrule that objection.

(Exception.)

30 Q. Have you any scruples against finding a defendant charged with a serious offense guilty upon circumstantial evidence?

A. No, sir; if the evidence is strong enough to convince my mind.

Judge HOWAT. No challenge for cause.

(Judge CHERRY excuses Mr. Smith.)

31 The defendant having exhausted all of his peremptory challenges, being fifteen in all, and the people having exhausted and waived all of their peremptory challenges, the following persons were sworn as jurors to try said cause, viz: S. D. Colbrown, C. H. Rampton, C. S. Favour, E. W. Layton, James Day, W. J. Parkin, W. H. Evans, Lewis Gronosky, B. F. Thornburg, N. A. Sherman, A. R. Carter, and Wm. J. King.

And the following evidence was introduced by the people in support of the indictment:

32 CARL VICTOR SODERHOLM, a witness sworn for the prosecution, examined by Judge Howat, testified as follows. Examined through Bailiff Neilson as interpreter:

Q. What is your name?
A. Carl Victor Soderholm.
Q. How old are you?
A. I am thirty-seven years of age.
Q. Where do you live?
A. Over to a place called Lovendahl, three miles beyond Murray.
Q. How long have you lived in that neighborhood?
A. I lived there for about three months. Previous to that I lived at Burgatown, close to defendant's place.
Q. You have lived three months at Lovendahl?
A. Yes, sir.
Q. Prior to that you lived at Burgatown?
A. Yes, sir.
Q. How near was that place you lived at Burgatown to the defendant's saloon?
A. About one quarter of a block from his saloon.
Q. How long have you known the defendant, Thiede.
A. A little over four years.
Q. What is your business—what do you work at?
A. I work at the smelters.
Q. Did you know Mrs. Thiede, wife of the defendant, Thiede?
A. Yes, sir.
Q. How long did you know her before her death?
A. I have known her since I moved down there four years ago; known her all the time.
Q. State to the jury what ill treatment, if any, you ever saw the defendant, Thiede, give to his wife.
(Objection, as leading and calling for a conclusion.)
THE COURT. The question does call for a conclusion. Let him state what he has seen between the parties.

33 (Question withdrawn.)
Q. State whether or not you saw the defendant, Thiede, kick his wife at any time.
(Objection, as being indefinite as to time and also leading.)
(Objection overruled. Exception.)
WITNESS. I should prefer Mr. Steele. There are a few words I can not understand.
(Mr. A. H. Steele was sworn as interpreter.)
(Question read.)
A. About four years ago.
(Objection, because the question is a direct question that can be answered by yes or no.)
THE COURT. The question can be answered by yes or no.
A. Yes.
Q. State what you saw him do.
A. About four years ago, while Mr. Thiede and his wife lived in the old lumber house, on a Sunday morning the witness heard some unusual noise,

and he came out, and when he came out Charley Thiede had his wife by the hair dragging her, turned her to the ground and kicked her, and this man stopped and told him to let her alone.

Q. State how he had her by the hair and what position the body was; was she standing up or on the ground?

A. He was dragging her, had hold of her up here in the hair, and when this man came up and hollered to let her go, they both ran into the brewery.

Q. The old brewery?

A. Yes, sir.

Q. I want to know if she was lying on the ground, if he was pulling her by the hair, or whether she was on her feet?

34 A. She was laying on the ground.

Q. Did he pull her along the ground by the hair or not?

A. The first he saw them they were wrestling; she was trying to get away and then she fell over and he was dragging her along.

Q. State to the jury whether or not he kicked her.

A. He wanted to raise her up and then he kicked her; told her to get up.

Q. Did he have his shoes on or not when he kicked her?

A. He don't know but what he had shoes or slippers; he had something on his feet.

Q. How often did he kick her at that time?

A. He seen him kick her, but don't remember just how many times, because when he hollered they both run into the brewery.

Q. You said you heard an unusual noise; what was it?

A. She was screaming, but when he came near they were talking German, and he couldn't understand what they were saying.

Q. The noise he heard was her screaming, was it, or not?

A. Yes, sir.

Q. That was about four years ago, you say?

A. It is over four years ago.

Q. When since that time, if ever, did he say he ill treated her again, or know anything about that of his own knowledge?

A. Lots of times he has heard her scream.

Judge CHERRY. I ask that be stricken out as not responsive to the question.

The COURT. That is not responsive.

35 Q. State whether or not since that time you have heard Mrs. Thiede scream when she was at the house or saloon of the defendant?

(Objection, as incompetent, irrelevant, and immaterial, and does not tend to prove ill treatment.)

The COURT. He may answer the question at present and we will see the connection.

(Exception.)

A. Sometime a little over a year ago—he can't exactly remember the date—while he was standing out by his house on the lot breaking up coal there was a lot of noise near Thiede's house, and this witness hollered over for them to be quiet, and then the girl replied, "Papa shall let mamma alone."

(Judge Cherry asks that be stricken out as not responsive.)

The COURT. Let him answer the question; that may be stricken out.

A. Yes; he has heard her scream and he has met her on the road, and Mrs. Thiede herself has told this man——

(Objection, as incompetent and prejudicial.)

The COURT. That part that is in answer to the question may stand and the other part may be stricken out.

Q. When was it you heard her scream, and about how often did you hear her scream since that time you speak of about four years ago?

A. About once a week on an average.

Q. Did you or did you not see Thiede strike his wife at any other time than about four years ago?

Objection, as leading and calling for a conclusion.

The COURT. He may answer.

(Exception.)

36 A. No; he has not, not seen a lick.

Q. Did you see her one night after dark, when she was crawling on her hands and knees? Did you or did you not see her?

(Objection, as incompetent, immaterial, leading, and suggestive.)

The COURT. The question is somewhat leading, but it is quite difficult to get these questions——

(Exception.)

A. Yes; one night while the witness, his wife, and daughter came from the meeting house. Coming down the road the hill is cut down and it makes it a solid wall of sand or clay, and the light from the smelters makes a reflection. The lower part of the wall is dark and the other is light, and while they were coming down the hill his little daughter remarked: "Papa, there is an animal."

Judge CHERRY. I object.

Q. State what he saw.

A. The witness went up and there was Mrs. Thiede walking on her hands and feet, and told this man not to talk to her because her husband——

(Objection as incompetent.)

A. Yes; he saw her walking on her hands and knees.

The COURT. It may be stricken out what was said or what was hearsay.

Q. State what he saw.

A. After he came home he came back and there were two or three men around here talking to her, and I guess that is all I can say.

Q. Around whom?

A. Mrs. Thiede, talking to her.

37 Q. When he first saw her she was crawling on her hands and knees, was she?

(Objection.)

Q. State what position she was in when you first saw her, as to being on her hands and knees or otherwise?

A. She was walking in a kind of squatted position so that her shadow wouldn't be seen in this light space on the wall.

Q. How far was this from Thiede's saloon?

A. About 300 feet.

Q. Did she appear to be alarmed or scared at that time?

Objection, as calling for a conclusion and opinion of the witness.

The COURT. Let him describe her condition. The question is permissable. He may answer.

(Exception.)

A. Yes, sir.

Q. What time of night was it when he first saw her?

A. Between nine and half past nine.

Q. How long ago was that?

A. October, last year.

Q. I will call your attention to last summer and ask you to state whether you saw Mrs. Thiede last summer at any time when her face was bloody; state whether that occurred.

(Objection, as no part of the res gestae.)

The COURT. What do you propose to show?

(Question withdrawn.)

Q. State whether or not you have seen Mrs. Thiede within the last year and a half when her face was bloody from injuries to her face or head.

38 (Objection as immaterial, irrelevant, and incompetent.)

The COURT. What connection do you expect to make?

Judge HOWAT. I expect to show a continuous course of ill treatment to this woman from the time I have mentioned down till now; that he kicked her, blacked her eyes, struck her with a stick, and I want to show the result of these injuries.

Judge CHERRY. I didn't make that law that proscribes hearsay testimony, and I am keeping myself within the purview of the law. Suppose the woman had received an accident. She might have received several accidents, each one of them leaving a mark or bruise, and by this sort of testimony all that would go to the jury and tend to cause them to infer it all had been inflicted by the defendant, and that would shift the burden of proof on him. They have not attempted to connect him——

The COURT. I have called for an explanation of the prosecuting attorney's position. It is very important upon any admission of testimony, and I take it where there has been shown that there has been ill treatment that the condition of the person ill treated can be shown in evidence, and the question is admissable.

(Exception.)

A. Yes, he has.

Q. When was it?

A. He cannot say the day, because she looked that way all the time. She didn't have time to heal up before she had another blue eye.

Cross-examination by Judge CHERRY:

Q. Do you speak German?

A. Swedish, not German.

Q. Could he talk English as well four years ago as now?

39 A. He has been here six years and couldn't talk as well four years ago as now.

Q. Could he talk any English then?

A. He could say "yes" and "no."

Q. Where did you live four years ago?

A. He lived in Burgatown, half a block from Thiede's saloon—a quarter of a block.

Q. How far is a quarter of a block?

A. The distance is from here where he sits to the corner of that next building.

Q. Can he tell it in feet or *yards*?

A. He can not.

Q. Does he know it by any rule of measurement?

A. He said let him go home and he will measure it and tell you the exact number of feet, but now he cannot do it. No, sir.

Q. Ask him how he remembers it was Sunday morning four years ago he saw Mrs Thiede and his wife wrestling.

A. He remembers because he was not working that day and he stayed in bed till 8 o'clock, and then he went to meeting.

Q. Where did he go to meeting?

A. 12 o'clock in the afternoon he went to the meetinghouse in the ward, and at night they had a meeting in Burgatown in a little room they rented there.

Q. Did this happen after he went to meeting or before?

A. The struggling between Thiede and his wife was in the morning, and he went to meeting in the afternoon.

Q. What time in the morning?

A. It was around 8 o'clock, just after he got out of bed; he can't exactly say the time, but it was near that time.

Q. Ask him what time in the year it was?

A. He can't remember whether it was spring or fall, but there was no snow upon the ground, but not very cold, so it must have been in the summer time.

The court gave the customary admonition to the jury and court adjourned until 2.00 p. m.

The COURT. You don't require the bailiffs to be sworn each time?

A. (Judge Cherry.) No, sir.

FRIDAY, *October 12th*, 2.00 *p. m.*

The COURT. The bailiffs will see that none of the witnesses come into the court room. Poll the jury.

Q. Which side of the street do you live on?

(It is agreed between counsel that the rule in regard to witnesses does not apply to expert medical witnesses.)

Q. (Repeated.)

A. On the east side of the street. The street that runs parallel with the railroad.

Q. Which side of the little street that runs east from the county road?

A. On the left-hand side.

Q. When you are going which way?

A. On the left-hand side when you go from the saloon.

Q. Then it would be on the north side of the street running east and west?

A. North side of the street.

Q. How many houses are there between your house and the main road or bridge?

A. No houses; all clear.

Q. Is his the first house?

A. On that side of the street?

41 Q. Is his the first house east of the bridge?

A. On that side of the street he is all alone—the first house to the bridge. For two and a half years he lived in this house, but after that he has moved a little further in to what they call Burgatown.

Q. I meant where he lives now?

A. He has built the house for himself and he don't live down there any more.

Q. Don't live in Burgatown?

A. Not now.

Q. Where did he live four years ago?

A. In that first house east of the bridge on the north side of the street.

Q. You afterwards moved further east up into Burgatown, on the other side of the street, did you?

A. Yes, sir; he moved across the street a little further in.

Q. How long did he live there?

A. About one and a half years.

Q. How long ago was it when he moved up there?

A. About one year and a half.

Q. I want to know whether he means a year and a half ago he moved there further up on the south side.

A. He has lived in Burgatown four years, but he can't remember how long in each place.

Q. Is that the only two places he lived in Burgatown?

A. Yes, sir.

Q. He can't remember how long ago it was that he first lived in the last place in Burgatown?

A. Not exactly; he can't remember.

42 Q. Ask him where he was when he first saw Mr. and Mrs. Thiede that Sunday morning.

A. He was outside of his house breaking up some coal.

Q. Whom did he see first, Mr. or Mrs. Thiede?

A. They were fighting and must have been right together.

Q. The first he saw of them they were scuffling?

A. He had her by the hair when he first noticed them.

Q. Where were they standing with reference to the brewery and the saloon?

A. It was by the old house near the brewery.

Q. How close to the old house?

A. He can't just exactly state the feet, but it was about midway between the saloon and the old house. Between the brewery and the old house.

Q. How close were they to the building?

A. He didn't pay much attention to the distance. All he was observing was that they were fighting and having some trouble.

Q. Did he hear any outcry or noise?

A. She was screaming and fighting, trying to get away from Mr. Thiede.

Q. Which way were they moving, or going in what direction?

A. They came out of the house and went into the brewery, so that they were moving towards the brewery.

Q. Did Mrs. Thiede get away from him?

A. When this man hollered to them she got loose and run in the brewery and Charley followed along.

Q. What did you say to him?

A. He told him to let her alone.

Q. What language did you say it in?

A. Swedish.

43 Q. Ask him if he knows whether Charles Thiede is a Swede or a German.

A. German.

Q. Ask him how close he was when he hollered.

A. He stood by his house and don't know the exact distance at all.

Q. Did he go any closer to where they were than where he was when he first saw them?

A. No; he didn't move any. He walked a little bit towards the bridge, but not far, because as he commenced to move they went in the brewery and he didn't go any further.

Q. Was there anybody else lived close around there at that time?

A. There were lots of people living around there.

Q. Ask him if he saw anyone else on the streets at the time he speaks of.

A. He can't remember as to that.

Q. Ask him if he could understand what either of them said when he heard the screaming.

A. He didn't pay any attention to whether it was English or German.

Q. I asked whether he could understand anything they said?

A. He could see there was trouble, but couldn't hear what was said.

Q. Did you see him kick her?

A. He put a foot on her and gave her a kind of a kick.

Q. Was it kind of a kick or kind of a lift—lifting her?

A. He didn't think he was helping her at that time, so that it must have been a kick.

Q. Ask him if he can illustrate to the jury about how he saw the kick.

A. He can't remember whether it was with the right or left foot.

44 I asked him if he could illustrate by the position. [Witness illustrates.] When he had her by the hair, that was the kind of kick it was.

Q. Ask him if Thiede's back was toward him.

A. He can't remember whether he had his back or face toward him.

Q. I understand the witness was east of where this happened, up the road toward Burgatown, and they were going from the house toward the brewery. I want to know if he was pulling or pushing the woman toward the brewery from the house.

A. She came running out of the house, and Charley came after and got her by the hair and pulled her over.

Q. Which way?

A. He wanted to get her back in the house, so he pulled her back toward the house.

Q. The woman was between him and Thiede?

A. Yes, sir.

Q. And he was as far from where that happened as from here to the corner of the building across the street, was he?

A. That is about the right distance as near as he can judge.

Q. About how long did he stand there watching them? How much time did it take before they went into the brewery?

A. It was daylight, and they stopped right away, because otherwise this man would have called the neighbors and went up there and stopped it.

Q. How is that?

A. It was daylight, and it didn't last long. After he called to them he stopped.

Q. They stopped?

A. Yes, sir.

Q. I understood him to say that Thiede run after her into the brewery, is that correct?

45 A. Yes; he ran after her in there.

Q. Did he run or walk?

A. He took long steps, very big jumps.

Q. Did he run or walk?

A. It was fast walking.

Q. You say you heard screams at Thiede's place once a week for four years?

A. Yes, sir.

Q. Commencing how long ago?

A. The moment he moved in the neighborhood he observed there was trouble in Thiede's family.

Question read:

A. A little over four years.

Q. Has he heard it ever since that time until this homicide?

A. Yes, sir.

Q. Every week?

A. On an average once a week?

Q. Ask him if he heard her scream during the year 1891, three years ago.

A. He heard her ever since he has moved into that neighborhood. He has heard her all the time.

Q. How long has he lived in that neighborhood?

A. As long as he has lived there, and that is a little over four years; about four or four and a half years in that neighborhood, that length of time.

Q. He has heard Mrs. Thiede scream every week down there?

A. Pretty nearly every day, averaging up about once a week.

Q. Ask him if he kept any record of it.

A. No one asked him to, so he didn't do that.

Q. Do you know it was Mrs. Thiede screamed?

A. Because he was well acquainted with her and knew her voice very well.

Q. Ask him if he ever visited at her house.

A. He didn't dare to, because Charley would have licked him if he would have gone in the house.

46 Q Ask him if he ever was licked by Charley.

A. Charley wasn't big enough to lick him.

Q. Could Charley lick him?
A. No, sir.
Q. He was not afraid of Charley, was he?
A. No, he was not; but he didn't want to get into trouble with him.
Q. Ask him if he ever talked to Mrs. Thiede.
A. Yes, sir.
Q. About how often?
A. He can not just say.
Q. Ask him what language he talked to her in.
A. Swedish.
Q. Did Mrs. Thiede understand the Swedish language?
A. Yes, sir.
Q. Will he swear to that?
A. Yes, sir; and Charley Thiede, too, understands Swedish.
Q. Ask if he talked to Mrs. Thiede in Swedish.
A. Yes, sir.
Q. And to Charley Thiede?
A. Yes, sir.
Q. Both of them?
A. Yes, sir.
Q. Ask him if he has ever been in that saloon Charley Thiede kept there when Thiede was in the saloon.
A. About two or three times; he can not just remember.
Q. During the four years?
A. H' don't make a habit of going to saloons, but he thinks three or four times.
Q. When Thiede was there?
A. Yes, sir.
Q. Ask him if he was ever there when Thiede was not there, but when his wife was there tending bar.
A. No, sir.
Q. Never was?
A. No, sir; he said he was there one time while she was there.

Q. I will ask him if he was not there about three weeks before
47 the homocide, and bought a bottle of whiskey, and didn't pay for it, and bought it of Mrs. Thiede.

A. Yes, sir; but he paid Charley afterwards for it.
Q. Ask if he will swear he paid Charley for it.
(Objection, as immaterial. Question withdrawn.)
Q. I will ask if it is a fact he didn't pay it to the little girl.
(Objection, as immaterial.)
Judge CHERRY. I want to test this witness's memory.
A. Some one sent word from Thiede's place about the debt, and the witness sent his little daughter over with the money, but who the little girl gave the money to he cannot say.
Q. You say you saw Mrs. Thiede one night crawling on her hands and feet up the country road?
A. She was walking in a kind of a stooping condition, and the moment she saw these people coming she squatted down so that she should not be observed by them.
Q. Who was with him?

A. His wife and daughter.
Q. Is that all?
A. That's all.
Q. Ask him if there were not some other men came along there about that time?
A. He didn't see any men then. His wife and daughter went back, and then there were some men there by Mrs. Thiede.
Q. Who were they?
A. Women, too; ladies.
Q. Those men were women?
A. There were some ladies, too. He didn't know any of them.
Q. Were they men or women?
48 A. It was dark, and he didn't pay any atttention to how many of each kind and who they were, as he didn't want to mix up——
Q. Did he walk away?
A. Yes, sir.
Q. Did the men remain there?
A. When they came back they were standing there, and she was crying and pressing her hands.
Q. And he didn't know who the men were?
A. No, sir.
Q. Did he go away and come back?
A. He was going back to see what was the matter.
Q. He was going back, or did he go back?
A. He did go back.
Q. How close did he go to her?
A. They were on one side of the street and his folks and he were on the other side of the street—about the width of the street.
Q. Did he speak to Mrs. Thiede?
A. The first time, when she was alone, he did.
Q. Did he when he went back?
A. No, sir.
Q. What was she doing when he first saw her?
A. She was not doing anything, but was walking in a leaning forward condition.
Q. Which way was she going?
A. South, up the hill.
Q. Which way was she going when he came back the second time?
A. They were remaining still; all of them in one place.
Q. What did she do when he came back the second time; what was she doing?
A. She was crying and rubbing her hands—twisting her hands.
Q. Could he hear her cry?
A. Yes, sir.
Q. How near did he go to her the second time?
A. He can't remember the distance, but they were on one side of the street and she on the other.
49 Q. Is that true, both the first and second times he saw her?
A. The first time he had to go up to see what it was. He thought it was an animal, and he went up close to her that time.
Q. It was quite dark?

A. Yes, sir.

Q. He couldn't tell it was a woman across the street?

A. No, sir.

Q. Did he speak to her that time, the first time he went over?

A. Yes, sir.

Q. And not the second time?

A. No, sir.

Q. Ask him if there was any change in the lights during the first and second times.

A. The lights from the smelters make it lighter at some times than at other times, but he said about that high from the ground there is light, but below it is always dark, but the blasting or something at the smelters made it light.

Q. Ask him if at either of these times she was standing in the light or in the dark.

A. The second time he saw her they were standing in a circle, but he can't remember whether they were high enough to be in the light or not.

Q. You say you saw her with her head bloody, and she looked that way all the time?

A. Yes, sir.

Q. For how long a time?

A. There was never a week passed that she didn't have a black eye or some bruise about her face.

Q. For how long a time?

A. Constantly; all the time he knew her.

Q. For how long a time before the woman died? Did you see her every week?

50 A. While he lived in the house nearest the bridge he saw her generally every day. Sometimes he worked nights and sometimes day shifts, but he generally saw her sometimes walking between the brewery, saloon, or house about the place.

Q. Were the bruises and marks he speaks of on her face?

A. Yes, sir; about the face.

Q. Where they could be plainly seen by anyone?

A. Yes, sir.

Q. You don't like Charley Thiede very well, do you?

A. From the first time he saw him lick his wife he never liked him from that day on.

Q. Ask him if he has ever had any trouble with him.

A. No, sir.

Q. Ask him if he is the same Mr. Soderholm that had a fight with his wife out on the bridge one Sunday morning.

The COURT. That is not cross-examination.

(Exception.)

Q. Ask him if he is the same individual who had trouble with his wife in Burgatown by reason of having a woman in his room, and when his wife came home he and his wife got into a fight out on the street, and he run and hid.

(Same objection and exception.)

Q. I want to know if this witness is not in the habit of whipping his wife?

(Objection as immaterial, incompetent, irrelevant, and not cross-examination.)

The COURT. That is not cross-examination. If you wish to impeach the witness there is a proper way to do it.

Judge CHERRY. I want to show the animus, bias, prejudice, and general character of this witness.

(Objection sustained. Exception.)

51 Redirect examination by Judge HOWAT:

Q. This Sunday morning a little over four years ago, when you saw Thiede pulling his wife, state whether she was on the ground or on her feet when he was pulling her by the hair?

(Objection as repetition.)

The COURT. He may state.

(Exception.)

A. They came out of the house and he had her by the hair and pulled her over toward him.

Q. Did she get down on the ground or not?

A. Yes, sir.

Q. On that evening when they came from the meeting, he and his wife and child, and saw her, and he went up to her and spoke to her, did she talk with you at that time?

A. Yes, he talked to her.

Q. Talked back and forth?

A. Yes, sir; they exchanged words.

Q. How long did they talk at that time?

A. She said——

Q. Who said?

A. He asked her what was the matter——

Q. I asked how long they talked together.

A. Just a few words, then he went along.

Q. Were they close together?

A. About the same distance as we are sitting now.

Q. Did she appear to be drunk or sober at that time?

A. He never saw her drunk.

Q. Was she crying at that time or not?

A. She was sad and motioned for him to go on.

Q. How long after that was it he went back and saw some men and women there with her.

A. 5 or 10 minutes.

52 Q. Were they men and women or men only with her there at that time?

A. It was dark and he didn't pay much attention, but he is pretty sure there were both classes, ladies and gentlemen.

Q. Was that the time she was crying and 'ringing her hands?

A. Yes, sir.

Judge CHERRY. The first time or second time?

Judge HOWAT. The second time.

Q. He said she was going up the hill to the south; was that going away from the saloon to the house or towards it?

A. Going away from the saloon.

Q. About how far from the saloon at either of these times? Which was the farthest distance?

A. About 300 feet, as near as he can say.

Recross-examination by Judge CHERRY:

Q. Who spoke first when you went over to where she was?

A. He spoke first; he went to her and asked her what was the matter.

Q. Did she stop walking as he walked over tow'rd her?

A. She was sitting down, kind of squatted down, because she didn't want to be seen.

Q. When he first went over?

A. Yes, sir.

Q. Ask him if she was in the same place the second time when he came back and when the other parties were there—the same place as she was the first time?

A. He don't remember whether it was the same place or not, but it was right in that dugout there.

53 Q. I will ask how much time elapsed between the time he left her the first time he spoke to her and the time he went back to her?

A. He didn't have no watch, so he couldn't say, but between five and ten minutes.

Q. Did he go down to the house first?

A. No, he didn't go home to his house; he only went a distance and came back again.

Q. Did his wife and child go back with him?

A. Yes, sir; they went together.

Q. The second time?

A. Yes, sir.

(Judge Cherry asks that all this testimony except what he has detailed has occurred on the Sunday morning in front of the house be withdrawn from the consideration of the jury and stricken out, for the reason they have not connected the defendant with this transaction at night up there on the hillside.)

Judge HOWAT. When was that he met her there that evening on the hillside?

A. He thinks it will be this fall a year ago now.

Judge HOWAT. We resist the motion.

Judge CHERRY. We move to strike out all his testimony excepting the transaction which occurred four years ago which connects the defendant. The other we move to strike out, for the reason there is no connection shown whatever between this defendant and the occurrence he has related.

The COURT. Motion overruled.

(Exception.)

54 Mrs. JOSEPHENA SODERHOLM, a witness sworn for the prosecution, examined by Judge Howat, testified as follows. A. H. Steele sworn as interpreter:

Q. Are you the wife of the witness Soderholm who has just left the stand?

A. Yes, sir.

Q. Been living with him for four years or more?

A. For six years they have lived together in this country; twelve years married.

Q. How long have you known the defendant, Charles Thiede?

A. Five years.

Q. State whether or not she ever saw Charles Thiede strike his wife.

(Objection as leading, suggestive, and indefinite as to time.)

Q. If so, state what you saw him do.

(Objection as being a duplicity and as indefinite.)

The COURT. She may answer that question.

(Exception.)

A. Yes; she saw Mr. Thiede lick his wife. It was a Sunday morning. Charley Thiede had her by the hair and had a big stick, licking her with it, and then they went into the saloon, and that was all she saw.

Q. How long ago is it since she saw him that Sunday morning licking her with the stick?

A. About three and a half years ago, while the old house was still there.

Q. How big was the stick?

A. It was a long cane, a little thicker than a chair rung [witness indicates the witness chair].

Q. State whether or not she ever saw him strick her at any other time than that.

55 (Objection as leading.)

Q. Did you or did you not ever see him strike her at any other time?

The COURT. She may answer.

(Exception.)

A. She never saw him lick her after that.

Q. State if at any time she went over to the old brewery and found her there.

(Objection as leading and suggestive.)

The COURT. Counsel should abstain from leading questions. The witness may answer.

(Exception.)

A. Yes; she has.

Q. Now, state when that was.

A. A year ago now, either the latter part of October or the first of November a year ago.

Q. Now, what was the occasion of her going there? How did she come to go there?

A. Because Thiede's little girl came over to the house and said Thiede——

Q. How soon after Thiede's little girl came over did she go to the brewery?

A. About one hour after.

Q. Where did she find Mrs. Thiede?

A. Up in the attic of a malt house they had there.

Q. What time of the night or day?

A. 12 o'clock at night.

Q. Was the weather cold or warm?

A. Cold.

Q. Was anybody living in that malt house or brewery, or not?

A. No, sir.

Q. What did they hear or see of Mr. Thiede there when they were over?

A. They both heard *heard* and seen him.

56 Q. Who went with her?

A. The witness, her daughter, and Thiede' daughter.

Q. Annie Thiede?

A. Yes, sir.

Q. What is the name of your daughter?

A. Victoria.

Q. Where did they see Thiede, the defendant, at that time?

A. Right outside of the saloon.

Q. What was Mrs. Thiede doing, as to crying or not crying?

A. She was calling Annie.

Q. What did Thiede say, if anything?

A. He said that he was going to shoot them, so they run away.

Q. Who ran away?

A. The witness, her daughter, and I don't know what became of Thiede's daughter.

Q. Where did they run to?

A. Home, to her house.

Q. Did they see Mrs. Thiede at that time, or just hear her?

A. She stuck her head out of a little window, and they both heard and saw her.

Q. Do you know how she was dressed, or whether she was undressed?

A. She had very little on her; appeared as though she had just got out of bed.

Q. Were you with your husband one night returning from meeting, about a year ago?

A. Yes, sir.

Q. State what you saw of Mrs. Thiede at any particular time when you and your husband and little girl were returning from meeting.

(Objection. Objection overruled. Exception.)

A. While they were coming from the meeting she was sitting

57 down against this bank, and her little daughter told her father——

Q. Now, when was that, with reference to this time when she saw Mrs. Thiede up in the attic of the malt house; before or after?

A. This was before they saw her in the attic of the malt house.

Q. About how long before?

A. About two or three weeks.

Q. You may state whether you went back with your husband after you saw Mrs. Thiede the first time, and saw her again that night, when you saw her by the bank.

A. Yes; she did go back.

Q. State whether there were men there only, or both men and women, with Mrs. Thiede at that time.

A. Both men and women.

Q. What was Mrs. Thiede doing, as to crying or not crying?

(Objection as leading and suggestive.)

The COURT. She may state what she was doing.

A. She was crying.
Q. What, if anything, was she doing besides crying?
A. She was crying and 'ringing her hands.
Q. How far was that from Thiede's saloon?
A. She cannot say, but it was right around the corner from the saloon, around the sand bank.
Q. Was Thiede at home about that time or not that day?
A. He was home in the saloon.
Q. That night about the same time they saw Mrs. Thiede there?
A. Yes, sir.
Q. State whether you ever you saw Thiede chase his wife or not.
(Objection as leading.)
58 The COURT. She may answer.
(Exception.)
A. Yes, sir.
Q. How often?
A. Generally every day.
Q. What did the wife do then; what was she doing?
A. She didn't pay any attention to that.
Q. State whether Mrs. Thiede was running around.
A. Sometimes she run and sometimes walked when he was after her.
Q. State to the jury whether you ever heard Mrs. Thiede screaming about the house or not, or saloon, when her husband was at home or in the saloon with her.
A. Right along at nights.
Q. State whether Mrs. Thiede was usually sober or drunk.
(Objection as immaterial, irrelevant, and incompetent.)
The COURT. She may state what her condition was.
(Exception.)
A. She never saw her drunk or saw her drink.

Cross-examination by Judge CHERRY:

Q. Do you speak English?
A. No, sir.
Q. Do you understand English?
A. She understands some things, but not very much.
Q. Does she understand German?
A. No, sir.
Q. How near do you live to Mr. Thiede?
A. A quarter of a block.
Q. About how far is that?
A. Take from that wall away out back there a little ways.
Q. Can't she give any better idea?
A. Not quite the distance of twice from that wall to this wall.
59 Q. Twice the width of this building?
A. This room here.
Q. That occurrence that you saw between Mr. Thiede and his wife three and a half years ago, was anyone else present to see that but you?
A. Yes, sir; Orstrums, but they moved away.
Q. Was her husband present?
A. Yes, sir.
Q. Did you go down to where they were?

A. No; they didn't go there.
Q. Did her husband go down?
A. They didn't go, but they only called.
Q. Ask her who called; ask her if she said anything.
A. Her husband called and she called.
Q. Both called?
A. Yes, sir.
Q. Ask her what Thiede done when they called out.
A. They run away, and that was the last of it.
Q. Ask her what the first thing was she saw of the occurrence.
A. She saw him outside, and he had a stick hitting her with it outside of the brewery.
Q. Did she see them come out of any building, come out of the house?
A. They came out of the saloon or the house.
Q. Which was it, saloon or house?
A. They came out of the old house where they lived in.
Q. Which one came out first, he or she?
A. She did.
Q. She came out first?
A. Yes, sir.
Q. How often did he strike her with the stick?
A. Right along; pulled her by the hair and kicked her.
60 Q. In what part of her person did he strike her?
A. Wherever he got a chance—in the head, shoulder, or hip—wherever he happened to strike her.
Q. Did she hear him say anything?
A. He was hollering.
Q. Mr. Thiede?
A. Yes, sir.
Q. What did he say?
A. She couldn't hear; didn't know what he said.
Q. Did she hear Mrs. Thiede say anything?
A. No; she heard her make some noise.
Q. Thiede was making the most noise, was he?
A. She was hollering the most.
Q. Could she understand anything that was said?
A. No; they couldn't distinguish anything that was said.
Q. What else did he do besides strike her with that stick?
A. Kick her.
Q. How many times did he kick her?
A. Oh, he kept on a little while, as long as they were outside; she can't remember how many times.
Q. What did they do as soon as they hollered at them, her and her husband?
A. They went in out of sight.
Q. Which one went into the brewery first?
A. She did.
Q. Did you holler right away, you and your husband, as soon as you saw them fighting?
A. Yes, sir.
Q. Ask her if they quit fighting and run right away after that.

A. He kicked her and dragged her almost in the house.

61 Q. After they hollered?

A. Yes, sir.

Q. Ask her if she is not mistaken about that occurrence, and if it wasn't her and her husband had a fight of that kind on the bridge.

The COURT. That is not cross-examination. If the witness is to be impeached there is a proper way.

(Exception.)

Q. I will ask you if your husband is not in the habit of whipping you?

The COURT. There is no necessity for asking those questions.

Judge CHERRY. I have a right to ask them, and if she don't desire to answer them, or if counsel objects, that is their privilege.

Judge HOWAT. Counsel has no right to ask questions that have been passed upon, when there is simply an evident purpose to influence the jury.

(Objection sustained. Exception.)

Q. I will ask you if you haven't had trouble with your husband in regard to a woman being found in your house when you returned home on a certain occasion?

The COURT. If counsel will make the statement he is in good faith the court will consider it.

Judge CHERRY. I will state my purpose and my good faith; it shows for itself. I propose to show that these parties are prejudiced against the defendant by reason of certain facts that came out of a little scandal transaction and difficulty between this witness and her husband arising——

The COURT. I ask if these questions are in good faith?

62 Judge CHERRY. I can only rely on information received from my client and others that I am asking for facts which I expect to prove and I want to put these questions to this witness.

Judge HOWAT. I object as incompetent.

(Objection sustained. Exception.)

Q. What time of night was it you saw Mrs. Thiede in the old brewery?

A. 12 o'clock at night.

Q. What kind of a night was it?

A. Cold night.

Q. Was it dark?

A. It was moonlight.

Q. How does she know it was 12 o'clock at night?

A. Thiede's girl came to the witness's house at 11 o'clock.

Q. And she didn't go over there for an hour afterwards?

A. No, sir.

Q. Did she go over there for the reason that Thiede's girl had come to her house?

A. The little girl, Thiede's daughter, was crying and didn't know where Mrs. Thiede was and wanted them to come and find her.

Q. I asked her if she went over there, her trip over to the Thiede place was in consequence of the little girl coming over to her house?

A. Yes, sir.

Q. I will ask you how near you got to the saloon when you went over there?

A. About the corner of the saloon by the bridge.

Q. By the bridge or saloon?
A. By the bridge.
Q. She was not any nearer than the bridge, then?
A. No; they didn't dare to get any nearer.
63 Q. Ask her if she talked to Mr. Thiede any?
A. No, he called and said he would shoot them.
Question read:
A. No, sir; they run back.
Q. Did she talk to Mrs. Thiede?
A. No, sir.
Q. How long did they stand there?
A. About two minutes.
Q. Who was with her?
A. The witness, her daughter, and Thiede's little girl.
Q. Did Thiede's little girl stay at her house all the time during that hour?
A. Yes, sir.
Q. Did Mrs. Thiede say anything to her?
A. She just called Annie.
Q. Did she say anything to this witness?
A. No, sir.
Q. Ask her which side of the brewery that window is.
A. It is on the side of the brewery that faces to the big road that runs north and south.
Q. The window is on that side?
A. Yes, sir.
Q. Then it is on the east side of the brewery?
A. Yes, sir.
Q. Ask if there was any light in the brewery?
A. No, sir.
Q. Ask her if she could see whether Mrs. Thiede was dressed or not?
A. They could see she had something on.
Q. Could she see anything but her face and upper portion of her body?
A. The top of her shoulders and head.
Q. Was the window raised?
A. Just empty space; there is no window in it—no glass.
Q. How large an opening is it?
A. Small-sized window-pane glass.
Q. Can she illustrate how big it was?
64 Q. About one and a half feet square?
A. (Witness indicates.)
Q. When you came down on the road and stopped two minutes and Thiede came and said he would shoot you, which way did you go?
A. They went home.
Q. Who went home?
A. Her daughter and herself, the witness.
Q. Which way did Annie Thiede go?
A. She got scared, and don't know what became of Annie.
Q. At the time you saw Charles Thiede beating his wife that Sunday morning, how long a stick was it he had in his hand?
(Witness indicates.)

Q. Are you sure it was that long?
A. Yes, sir.
Q. How big around was it?
A. A little bit larger than the chair rung.
Q. How close was she to where they were?
A. She stood on her left.
Q. That is the first house east of the bridge?
A. Yes, sir.
Q. And this happened down between the old house and the saloon?
A. Yes, sir.
Q. Did she ever see the stick after that?
A. No, sir.
Q. Did she ever see it before that?
A. No, sir.
Q. Does Mrs. Thiede talk Swedish?
A. Yes, sir.
Q. Talk it well?
A. Yes, sir.
Q. Did she ever visit Mrs. Thiede's house?
A. No, sir.
Q. Did Mrs. Thiede ever visit her house?
A. Yes, sir.
Q. To make visits there?
A. Yes, sir; but not often.
Q. The night you saw Mrs. Thiede on the county road when you were coming home from church, I will ask you how far you were from her when you first saw her?
65 A. From here to the reporter.
Q. About ten or twelve feet?
A. About that.
Q. Was her husband with her?
A. Yes, sir.
Q. Was she on the same side of the road Mrs. Thiede was?
A. They were on one side and she on the other.
Q. Did you stop and talk to her any the first time?
A. Yes, they stopped and she exclaimed, "That is Mrs. Thiede."
Q. Was it very dark that night?
A. A little moonlight.
Q. How long did she stop and talk to her?
A. They didn't stop at all, because Mrs. Thiede told her to go on.
Q. How far did they go?
A. Down to the corner.
Q. How far was this from the corner where they first saw her?
A. They went to the corner; she don't know how many feet it is.
Q. Did she go back then, again?
A. Then they went back at 10 o'clock.
Q. At 10 o'clock?
A. Yes, sir.
Q. Did she go clear to her house?
A. She said when they went to the meeting she was there; when they came from the meeting she was there.

Q. She was there when they went to the meeting and when they came back?

A. Yes, sir.

Q. How long was she at the meeting?

A. Two hours.

Q. Ask her if they spoke to her when they came back?

A. Yes; they went up to her then.

Q. How long did she stop and talk to her then?

A. About 15 minutes.

66 Q. Did they go away and leave her there?

A. There were some men and ladies talking to her, so they went.

Q. Ask her if she is sure they saw her when they went to church up that road.

A. Yes, sir.

Q. And did her husband talk to her at that time, or did she?

A. They asked her what was the matter.

Q. Did they find her in the same place when they came back?

A. Yes, sir.

Q. After they went toward their home, coming back, did she or her husband go back to where she was?

A. Yes; they went there.

Q. Who went back, she or her husband?

A. The girl, her husband, and herself; all of them.

Q. Did they go home before they went back?

A. Yes, sir; they went home.

Q. Ask her whether those men and women were there when they went back to her the third time they saw her.

A. Yes; they were standing still in the same place.

Q. Ask her if she went away and left her there that time.

A. Yes; they went.

Q. Ask her if she saw Mrs. Thiede up that road three times—when they went to church, two hours afterwards when they returned from church, and then a few minutes afterwards after they had gone home and come back to where she was again.

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

67 Q. She was with her husband and daughter each time that they saw her?

A. Yes, sir.

Q. And heard all that was said and saw all that took place?

A. Yes, sir.

Q. Ask her what Mrs. Thiede was doing the first time they saw her when they went to church.

A. Mrs. Thiede didn't say anything, but just motioned for them to go on and not talk to her.

Q. Which way was she walking?

A. She was sitting down along the bank.

Q. She was creeping along, then?

A. No, sir; she was just squatting down.

Q. Which way did they go to church?

A. They came from the south going north; they were going downhill when they went to the meeting, going to Burgatown.

Q. Coming downhill and going to Burgatown?

A. Yes, sir—that is, going from south north. The hill runs north and south; uphill is south and downhill is north.

Q. When they first saw her they were going down toward Burgatown?

A. Yes, sir.

Q. When they saw her next they were going up the hill in the other direction?

A. They were going uphill.

Q. Where did the witness live at that time?

A. They moved up to Burgatown.

Q. What direction is that?

A. South from Burgatown, up the hill.

68 Q. About how far from the bridge to where they lived?

A. About one quarter of a block. She said it was about the same distance from Charles Thiede's saloon to the other house across the street as it is from this house to the other house.

Q. Where she lived at this time was about one quarter of a block from Charles Thiede's saloon?

A. Both about the same distance.

Q. Is her home south, up the hill?

A. The house she lived in that time, for two months, is up on the hill, south.

Q. How long did she stay where Mrs. Thiede was, the last time she came back with her husband, after she returned from her home the third time.

A. They stayed around there about 15 minutes, but didn't talk to her, but were talking to people that stood around there.

Q. She said Mr. Thiede was in the saloon at that time?

A. Yes, sir.

Q. Did she see him?

A. He was in the saloon and they both heard and saw him.

Q. Was she in the saloon?

A. No, sir.

Q. How near did she go; did she go west of the road?

A. She went very near to the bridge, right by the saloon.

Q. Where did she see the defendant?

A. The door was ajar and they could see him through the window in that end of the house toward the bridge.

Q. Weren't there blinds over the window?

A. No, sir.

Q. Weren't any blinds over the saloon windows?

A. No, sir.

69 A. Ask her if it was Sunday evening?

A. No, sir.

Q. The church they speak of wasn't held on Sunday?

A. The first time was on Sunday and this was on Wednesday.

Q. I mean the time they saw Mrs. Thiede up by the bank that night they went to church; they saw her three times that same night; ask her if that was Sunday night.

A. Wednesday.
Q. Wednesday night?
A. Yes, sir.
Q. Did she hear Mr. Thiede that night?
A. Yes, sir.
Q. And did she hear him say anything?
A. Only heard him make some noise—singing.
Q. How did she know it was Mr. Thiede?
A. She could see him.
Q. Was there anyone else in the saloon?
A. No, sir.
Q. How could she tell?
A. She could see all around; there was nobody there.
Q. She just walked along on the east side of the saloon by the bridge, then turned in toward Burgatown—is that correct?
A. Yes, sir.
Q. Is there a door on the east side of the saloon?
A. It is up towards the hill—that is, south.
Q. The door?
A. Yes, sir.
Q. You say you saw Thiede chase his wife a great many times?
A. Yes, sir.
Q. Did they sometimes run and sometimes walk?
A. Yes, sir.
Q. How often did you ever see that?
A. Every other day, or three or four times a week.
70 Q. How often did you hear Mrs. Thiede scream?
A. Often.
Q. You say you never saw Thiede strike her excepting that one time three and a half years ago?
A. No, sir.
Q. Ask her is she has been talking with her husband about their testimony, and seeing that their testimony would correspond.
A. No, sir.
Q. Never have?
A. No, sir.
Q. Didn't she ever talk with him to know what he remembered about it?
A. No, sir.
Q. Did he ever talk with her, asking how she remembered it?
A. No, sir.
Q. Ask her if she didn't talk to Judge Howat, the prosecuting attorney, through an interpreter.
A. Yes, sir.
Q. Ask her if she ever talked to her little girl about what her testimony would be?
A. No; she can talk anyway.
Q. Ask her if she ever talked to anybody about what her testimony would be, excepting to Judge Howat, through an interpreter.
A. No, sir.

71 VICTORIA SODERHOLM, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. How old are you?
A. Ten years.
Q. Do you know what an oath is; what you are to do now?
A. No, sir.
Q. Are you to tell the truth?
A. Yes, sir.
Q. Do you know what will become of a little girl who is sworn to tell the truth and does not tell it?
A. Yes, sir.
Q. What?
(No answer.)
Q. Can you understand English well?
A. No, sir.
Q. Did you go to school?
A. No, sir.
Q. Have you been going to school any?
A. Not very long.
Q. You can talk English?
A. A little bit.
Q. Are you going to tell the truth?
A. Yes, sir.
Q. Do you know whether it is wrong to tell a lie?
A. Yes, sir.
Q. Is it right to tell what is not true, or is it wrong?
A. It is wrong.
Q. Now, if you are allowed to testify here will you tell just what you know?
A. Yes, sir.
Q. And tell the truth about it?
A. Yes, sir.
Q. What is your name?
A. Victoria Soderholm.
Q. How old are you?
A. Ten years old.
Q. How long have you been going to school?
A. Half a year.
Q. What is your teacher's name?
A. Miss Bensen.
Q. Do you know Charles Thiede; did you ever know him?
A. Yes, sir.

72 Q. Did you know his wife, Mrs. Thiede, before she died?
A. Yes, sir.
Q. Do you know how she came to die?
A. No, sir.
Q. You know she is dead?
A. Yes, sir.
Q. Now, you may state whether at any time you went with your mother over toward the old brewery one night.
A. Yes, sir.

Q. How did you come to go over there; what was the reason you went over there that night?
A. Because Annie came over to us.
Q. Annie who?
A. Annie Thiede.
Q. How long ago is that, as near as you can tell?
A. A year ago.
Q. Who did you see, anybody there?
A. No, sir.
Q. See any women?
A. No, sir.
Q. Where was Mrs. Thiede?
A. Up in the roof of the brewery.
Q. How do you know she was up there; did you see her or not?
A. She whispered to Annie; she talked low.
Q. Were you close enough so that you could see her say that?
A. Yes, sir.
Q. And she called Annie?
A. Yes, sir.
Q. How close were you to the brewery, you and your mother?
A. We were not very close.
Q. Were you close enough to hear her call?
A. Yes, sir.
Q. Did you see Mr. Thiede that night, or hear him?
A. No, sir.
Q. Did you hear him at all?
A. Yes, sir.
Q. What did you hear him say? Where was he when you heard him?
A. He was by the saloon.
73 Q. What did he say?
A. He said if you won't get away he would shoot us.
Q. Said if you didn't get away he would shoot you?
A. Yes, sir.

Cross-examination by Judge CHERRY:

Q. You say you went over one night toward the brewery?
A. Yes, sir.
Q. Had you been in bed that night?
A. No, sir.
Q. Hadn't been asleep?
A. No, sir.
Q. Was it very late?
A. Yes, sir.
Q. Do you know what time it was?
A. No, sir.
Q. Was it dark?
A. Yes, sir.
Q. What time did you usually go to bed?
A. Not very late.
Q. Do you know what time you generally go to bed at your house?
A. No, sir.
Q. Do you sit up as late as 9 o'clock?

A. Yes, sir.
Q. As late as 10 o'clock?
A. Yes, sir.
Q. Do you sit up as late as 11 o'clock at night?
A. No, sir.
Q. Do you ever sit up as late as midnight?
A. No, sir.
Q. Was it as late as midnight that night?
A. No, sir.
Q. Was it as late as 11 o'clock?
A. Yes, sir.
Q. You think it was 11 o'clock?
A. Yes, sir.
Q. When you went over there?
A. Yes, sir.
Q. Now, have you any way of knowing it was 11 o'clock?
A. Yes, sir.
Q. How do you know?
A. It was very dark.
Q. The moon was shining, wasn't it?
A. No, sir.
74 Q. Are you sure of that?
A. No, sir.
Q. Can you remember anything about whether the moon was shining?
A. No, sir.
Q. The moon may have been shining, then it may not have been dark, or do you think it was dark?
A. Yes, sir.
Q. What do you say, was it moonlight or was it dark?
A. Dark.
Q. You remember quite well walking over there with Annie Thiede and your mother?
A. Yes, sir.
Q. You hadn't been asleep?
A. No, sir.
Q. How far over did you go, any further than the bridge?
A. A little further.
Q. Then did you stop?
A. Yes, sir.
Q. Could you see Mrs. Thiede?
A. No, sir.
Q. Couldn't see her?
A. No, sir.
Q. You heard her, did you?
A. Yes, sir.
Q. Hear her in the brewery some place?
A. Yes, sir.
Q. When you first went there did you see Mr. Thiede, when you first got there?
A. No, sir.
Q. Didn't see him at first?

A. No, sir.
Q. Did you or your mother say anything?
A. It was me.
Q. What did you say?
A. I said "There comes Mr. Thiede."
Q. But before that had you said anything to Mrs. Thiede?
A. No, sir.
Q. Where did Mr. Thiede come from?
A. The saloon.
Q. Come out of the saloon?
A. Yes, sir.
Q. What did he say?
A. He said if we won't get away he would shoot us.
75 Q. Did he have a pistol or a gun in his hand?
A. A pistol.
Q. Are you sure he had?
A. Yes, sir.
Q. Could you see a pistol in his hand?
A. I saw he stuck something in front of us, but I didn't know what it was.
Q. You don't know what it was?
A. No, sir.
Q. You don't know that he had a pistol in his hand, do you?
A. No, sir; but I saw something.
Q. You just thought it was, you saw something?
A. Yes, sir.
Q. You were frightened then, were you?
A. Yes, sir.
Q. You and your mother ran away?
A. Yes, sir.
Q. Which way did Annie Thiede go?
A. I didn't see where she went.
Q. Was she standing with you when Thiede said this?
A. No, sir.
Q. She had gone?
A. She run then.
Q. Had she run before Thiede spoke, or afterwards?
A. Afterwards.
Q. Which way did she run?
A. I did't see which way she run.
Q. She didn't go with you, did she?
A. No, sir.
Q. You went back home?
A. Yes, sir.
Q. And went to bed?
A. Yes, sir.
Q. Did your mother come back with you?
A. No, sir.
Q. Where did your mother go?
A. Both went home.
Q. Your mother and you went back together?

A. Yes, sir.

Q. I will ask you if you didn't go over to the house next day to see Annie?

A. No, sir.

Q. Don't you go over to see Annie pretty near every day?

A. Yes, sir.

76 Q. You go over there nearly every day, don't you?

A. Yes, sir.

Q. Don't you think you went over there the next day?

A. No, sir; I was not home the next day.

Q. You were over there a few days afterwards, weren't you?

A. Yes, sir.

Q. You used to play around Mr. Thiede's house a good deal with Annie, didn't you?

A. Yes, sir.

(Objection, as not cross-examination and immaterial.)

The COURT. Confine yourself to the examination in chief. She may state whether she played with the little girl.

Q. I ask you if you, in the time you were around Mr. Thiede's house playing with Annie, if you ever saw Mr. Thiede strike his wife or whip her in any way?

(Objection as not cross-examination.)

The COURT. The objection is made on the cross-examination.

Judge CHERRY. I will submit.

Q. Have you ever talked with your mother about what you should testify here to-day? Did she ever tell you about how you should swear when you came on the witness stand; what you should say in court?

A. No, sir.

Q. Never has talked to you about it?

A. No, sir.

Q. Has your father ever talked to you about what you remembered; talked over these matters?

A. Yes, sir.

Q. Has your mother?

A. Yes, sir.

Q. She has talked to you, too, has she?

A. Yes, sir.

Q. Asked you what you remembered about it?

A. Yes, sir.

77 Q. Talked over what you have told us here?

A. Yes, sir.

Q. You talked the same things over to your mother, haven't you?

A. Yes, sir.

Q. Several times?

A. Yes, sir.

Q. Did your mother tell you what to say when you came in court?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. She told you to tell the truth?

A. Yes, sir.

Q. Just what you know?

A. Yes, sir.

Judge CHERRY. I desire to move the court to strike out all of the testimony given by the witness Josephine Soderholm, excepting that which related to the transaction occurring three and a half or four years ago, where the defendant was connected with it. All the rest of her testimony, in which the defendant was not connected in any way, I ask be stricken out as immaterial, irrelevant, and incompetent, and not connected in any way with this defendant.

(Motion overruled. Exception.)

Judge CHERRY. We also move to strike out all the testimony of Victoria Soderholm as not having any connection with this defendant, and as incompetent, irrelevant, and immaterial.

The COURT. Same ruling.

(Exception.)

78 JACOB LAUENBERGER, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

The COURT. Fritz Lomax may be sworn as interpreter.

Judge CHERRY. No objections.

(Witness sworn in the German language through the interpreter.)

Q. What is your name?

A. Jacob Lauenberger.

Q. Where were you born?

A. Switzerland.

Q. How old are you?

A. 40 years old. He was born in '40.

Q. 54 years old?

A. Born in '40.

Q. How long have you lived in this country?

A. 21/2 years.

Q. Where did you first live after coming to this country?

A. State of New York.

Q. When did you come to Utah?

A. One year.

Q. Where have you been living during that time?

A. Back of Haynes' brickyard.

Q. Where is that?

A. Murray.

Q. Did he move into Charles Thiede's house near the brewery at any time?

A. The 15th of March this year he moved into Charles Thiede's house.

Q. How long did you live there?

A. Till now.

Q. You knew the defendant, Charles Thiede?

A. Yes, sir.

Q. Knew his wife, Mrs. Thiede?

A. Yes, sir.

Q. Did he know when she was killed?

A. He says the first of May, at night.

Q. Monday, Tuesday, Wednesday, or Thursday?

A. Monday night.

Q. Did you see Mrs. Thiede and Charles Thiede on Sunday night, just the night before she was killed?

A. Yes, sir.

79 Q. What first attracted his attention to them that night—Sunday night?

A. They were both in his garden and had a quarrel together, and that attracted his attention.

Q. How did he first know of the quarrel; did he hear or see them?

A. Yes; he heard it, but he couldn't make out what the quarrel was about.

Q. What was it he heard; was it a scream, or what was it? Ask him whether he heard anyone scream that night or not.

A. No, sir.

Q. What noise did he hear; what was it?

A. He only saw them; he didn't hear anything.

Q. What did he say, if anything?

A. He said, that is enough; let that woman alone.

Q. He said to Charles Thiede?

A. Yes, sir.

Q. What did he say to Mrs. Thiede, if anything?

A. He says he didn't say anything to her.

Q. Ask him if Mrs. Thiede came to his house then or not.

A. Yes, sir.

Q. Why did she come, if he knows?

A. He invited her in so that the quarrel should stop.

Q. The witness invited her into his house?

A. Yes, sir.

Q. And she came?

A. Yes, sir.

Q. What did you say to her when you invited her in?

A. He only told her to come in so that they would not quarrel any more.

Q. When the wife came into your house where did Charles Thiede go or come?

A. He come in, to'.

80 Q. What did he do to his wife, if anything?

A. He told her to go home in the house.

Q. What did he do to her, if anything?

A. He hit her with his hand.

Q. What part of her person?

A. Both sides of her head.

Q. How long did they stay in your house?

A. He stayed in there 15 minutes.

Q. Where did they go then; and the witness?

A. Charley Thiede went to his saloon; where his wife went to he don't know.

Q. Did you go with Thiede to the saloon?

A. He went down to the water-closet and then walked over to Charles Thiede's saloon and asked for a glass of beer.

Q. He and Thiede had a glass of beer together, didn't they?

A. Yes, sir.

Q. Where was Annie Thiede at the time they were drinking the beer?

A. She was in his own house.

Q. When they were drinking the beer where was Annie Thiede?

A. She was in the saloon.

Q. Where did Annie Thiede stay that night?

A. In the saloon, with Charles Thiede.

Q. When you were in the saloon with Charles Thiede did you hear or see Mrs. Thiede at that time?

A. She was come to the door and knocked on the door, but Thiede told her not to come in, to go down to the house or over to the house.

Q. What, if anything, did Mrs. Thiede say when she knocked at the door about coming in?

81 (Objection as not part of the res gestæ and incompetent.)

The COURT. He may answer.

(Exception.)

A. She didn't say a word.

Q. Did you see her that night? Did she go away from the door or not when her husband told her not to come in?

A. At the same time he went out of the saloon and see somebody pass by, and he thought it was Mrs. Thiede and left the place.

Q. Where was she; what was she doing?

A. He saw somebody walking outside of the house as he stepped out of the saloon.

Q. What time of night was it she knocked at the door and Thiede told her not to come in?

A. 10 o'clock.

Q. What time was it Mrs. Thiede and her husband came over to your house?

A. Half past eight or nine o'clock.

Q. Were you there from that time until the time that you went over to the saloon and had the glass of beer with Thiede?

A. He went over to the saloon by himself.

Q. From the time Mrs. Thiede came to your house did you know where Mrs. Thiede was until she knocked at the door?

A. No, sir.

Q. What time was it you went over to the saloon to get a glass of beer?

A. About 10 o'clock.

Q. What time did Mrs. Thiede come to your house?

A. 9 o'clock.

CHERRY. Your honor, I am informed that the interpreter is not correctly translating the answers of the witness.

HOWAT. Who told you so?

CHERRY. A member of the bar and the defendant.

Juror GRONOSKY. There were several statements here not rightly interpreted.

Judge HOWAT. Do you understand him fully?

A. Yes; I do. This gentleman, perhaps, misunderstood him, but the evidence was different entirely; in fact, I remarked that it was wrong.

HOWAT. Will you act as interpreter?

Juror GRONOSKY. Yes; I will.

82 Judge HOWAT. I want the record to show that Louis Gronosky, one of the jurors, acts as interpreter for this witness. The defendant, and by his counsel in open court, consents to that.

Judge CHERRY. I have no objections. So far as I know, Mr. Gronosky is well versed. If he is, that is all I ask.

Judge HOWAT. Do you consent he act as interpreter?

A. I have consented several times.

That it was here stated to the court, by the prosecuting attorney, that the witnesses, Jacob Lauenberger and his wife, Mary Lauenberger, spoke a peculiar dialect of the German language, and that it was very difficult to get anyone who could fully understand these witnesses; that he had been unable to find anyone who could fully understand the witnesses, and that he asked the court, under the circumstances, that the juror, Louis Gronosky, act as interpreter, and that the court said he might act as interpreter.

Louis Gronosky, one of the jury, sworn as interpreter.

Q. In regard to what particular matters do you think the interpreter misunderstood the witness?

A. In asking Mr. and Mrs. Thiede to come into the house, and the time also between nine and half past was interpreted about 8.

Q. You went to live in Mr. Thiede's house, adjoining the old brewery, on the 15th of March last; is that right?

A. Yes, sir.

Q. On the Sunday night before Mrs. Thiede was killed did you see Mr. and Mrs. Thiede?

A. Yes, sir.

Q. What attracted your attention to them?

A. He saw Mrs. Thiede that night. He had occasion to go out, and saw Mrs. Thiede there in front of the saloon.

Q. You spoke about a quarrel between Mr. and Mrs. Thiede. Did you hear that on Sunday evening?

A. He heard it Sunday night.

Q. What time of the evening was that?

A. About 9 o'clock.

Q. Was it dark?

A. Yes, sir.

Q. What did you say to Mr. Thiede, if anything?

A. He told Mr. Thiede to come there with his wife and child to his house in order that they should cease.

Q. Did they come?

A. Yes, sir.

83 Q. What did Thiede do to his wife after they came to his house?

A. He told her to go home to the house, and she said she would not go because he would kill her. "You will kill me to-night," she said, "if I go home." She don't want to go home because he will kill her that night.

Q. She said that to her husband?

A. Yes, sir.

Q. What did her husband do to her then?

A. He slapped her in the face, and told her to go.

Q. How many times did he slap her?

A. He is not positive, but about two or three times.

Q. When did Mrs. Thiede leave his house; what time of night?

A. About 9 o'clock, as near as he can tell, but he is not quite positive.

Q. Did the husband and little girl leave at the same time or not?
A. They all went out together.
Q. When did you leave?
A. About a few minutes later. He couldn't exactly say.
Q. You went to Thiede's saloon, didn't you?
A. Yes, sir.
Q. Who were in the saloon when you got there?
A. Nobody except himself, Mr. Thiede, and the little girl.
Q. Where was Mrs. Thiede?
A. He didn't see her at all.
Q. Did you have a glass of beer with Mr. Thiede in the saloon that evening?
A. Yes, sir; he did.
Q. Where did Annie Thiede, the little girl, stop that night?
A. She stopped with Mr. Charles Thiede.
Q. When he was in the saloon with Thiede having a glass of beer, state whether Mrs. Thiede came to the saloon door and knocked.
84 A. She came to the door and knocked, and he told her to go away.
Q. Who told her?
A. Mr. Thiede; that she should go down to the house.
Q. What time of night was that?
A. About ten o'clock or so.

Judge HOWAT. I wish to call this witness upon another branch of the case; that is all I want him for now.

Judge CHERRY. I object to that, as there is only one branch to this case.

(Exception.)

Cross-examination by Judge CHERRY:

Q. When did you see Mrs. Thiede Sunday evening the first time after dark; about what time?
A. He is not positive but what it may be 9 or half past 9.
Q. When he first saw her?
A. When he first saw her.
Q. Where was she?
A. About 9 o'clock or so, that is the first time.
Q. Where was she when he saw her?
A. In the garden with Mr. Thiede.
Q. Ask him if it was dark.
A. Yes, sir.
Q. How close was she to where the witness was?
A. About 20 or 30 feet, as near as he can say.
Q. Did he see Mr. Thiede at the same time?
A. They were together.
Q. Ask if Mr. Thiede was not watering the lawn.
A. He don't know what he was doing.
Q. It was too dark to see what he was doing, was it?
A. He said he didn't take no particular notice.
85 Q. Did he walk down to where they were?
A. He was on the street, while they were in the garden, he said.
Q. What part of the garden were they in?

A. Right near the street, at that time.

Judge CHERRY. I would like to ask counsel if he has any objection to my putting this plat on the wall for the purpose of locating certain points.

Judge HOWAT. Not if it is correct.

Judge CHERRY. I am not introducing it, but it will expedite matters.

Judge HOWAT. Very well.

Q. Were they on the grass or over toward the potato patch?

A. Where the grass is.

Q. Were they out near where the flower bed is?

A. Nearer to the street.

Q. Were they pretty close to the gravel walk?

A. A. Just where the water comes out from the spout there near where that is.

Q. Where the water comes out?

A. Yes, sir.

Q. Tell the witness that this map represents the premises, including the saloon, brewery, the house the witness lives in, the residence of Charles Thiede, and the water-closet. Ask him if he can point out about the place on that drawing where he saw Thiede and his wife when he first heard them quarreling.

A. [Witness indicates.]

Q. Where were you standing?

A. [Witness indicates.]

86 Q. Did you hear what they said to each other?

A. He didn't understand what they said.

Q. Weren't they talking in German?

A. He only heard, but couldn't understand what was said.

Q. Couldn't he tell what the quarrel was about?

A. He didn't know.

Q. Ask him if it wasn't about Mrs. Thiede falling down over the hose.

A. She might have fallen, but he had not seen her. He didn't see her fall.

Q. Ask him what was the first thing he said to them—the first word he spoke. The witness.

A. He simply said, I wish you would come into the house so that this trouble should cease.

Q. That is what he said?

A. Yes, sir.

Q. Did the trouble cease and did they quit quarreling at once out in the garden?

A. They did have a few little spats, but not what it was when he came.

Q. Did they both seem to be angry?

A. Yes; he thinks they were.

Q. Now, which one came over to the house first?

A. He believe Mrs. Thiede, but he is not positive.

Q. Can you say how long afterwards before Mr. Thiede came in?

A. He can't tell. It might be five minutes. He didn't count.

Q. Ask if the witness went in the house when Mrs. Thiede did.

A. He can't say whether they went in together, but almost at the same time.

Q. Ask him if Mrs. Thiede took a seat.

A. She sat down on his bed.

87 Q. Who was in the room besides Mrs. Thiede and himself?

A. He, the witness, his wife, his daughter, and his son-in-law.

Q. Ask him if his daughter and his son-in-law were sitting down in the room when they came in.

A. He cannot say positively whether they stood up or were sitting down; he cannot say.

Q. What did Charles Thiede say when he came in the room? What was the first thing he said?

A. He took hold of her that way, by her arm, and said, "You go home."

Q. Did he say go home or come home?

A. He said, "You go down to your home."

Q. Ask him if he didn't say Annie wanted to go to bed and she should go home and go to bed with Annie.

A. He didn't hear anything of that.

Q. Ask him if he was in the house all the time.

A. Yes, sir.

Q. What did Mrs. Thiede say when he took hold of her arm and told her to go home?

A. She said, "I don't go home; to-morrow I am going to town and I will sue you."

Q. She said that then?

A. She said that then.

Q. That is before he struck her?

A. She said that when he slapped her.

Q. I am asking what she said when Thiede told her to go to the house. What did she respond to him when they first came in?

A. She said, "I don't go down to the house, because you will kill me to-night."

88 Q. Ask him if he testified about this matter before the coroner's inquest on the first and second day of May last.

A. Yes; he was a witness.

Q. Ask him if his recollection of what happened was not better at that time, being the next day, being two days after this Sunday night, than it would be now.

A. He said he was so overcome when they came for him he really don't know; his mind was in such a state he couldn't say what he did say.

Q. I am asking him if he could remember what happened then better than now.

A. He thinks what he said at that time was the same as he says now. He believes what he said then was just as right as it is right now.

Q. Ask him if he testified before the coroner's inquest anything of his testimony about Mrs. Thiede saying that Mr. Thiede, if she went back to the house, Mr. Thiede would kill her; if he testified to anything of that kind before the coroner.

A. No, sir; he didn't.

Q. He didn't testify to that?

A. No, sir.

Q. I want to find out if he remembers this to be correct. This question was put to him before the coroner's inquest: "Ask if Mr. and Mrs. Thiede lived in a friendly way together or did they fight or quarrel sometimes," and his answer was this. And that you testified in answer to that question as follows. I want to know whether you did or not. He says: "He didn't see any fight except some quarrel or very loud talk; they both went out of the house. Charley wanted his wife to come in the house and she refused to come and he kind of slapped her in the face."

89 Judge HOWAT. I object, as incompetent.

The COURT. Counsel may ask questions from the record, but you must not read the record.

Q. I will ask you this: Did you testify before the coroner in answer to this question: Ask him if Mr. and Mrs. Thiede lived in a friendly way together, or did they fight or quarrel sometimes, and did you answer that he didn't see any fight except some quarrel or very loud words. They both went out of the house. Charley wanted his wife to come in the house and she refused to come and he kind of slapped her in the face. I want to know whether you testified to that or not.

A. He said that they were friendly.

Q. After she refused to come and after she said that she would not go down to the house because Charley would kill her, what did Charley say to her?

A. Nothing more but "You go down to the house; you go down to the house;" that is what he said.

Q. Did he take hold of her and pull her off the bed?

A. He said he took hold of her and pulled her off the bed.

Q. Now, was that before he slapped her or afterwards?

A. He couldn't tell whether it was before that or after that, because it was all in a wrangle and he couldn't tell positively.

Q. Did he slap her with his open hand or fist?

A. Open hand.

Q. How close was the witness standing when he slapped her?

A. Pretty near as the distance is between us.

Q. About four feet?

A. Yes, or perhaps six feet; he is not positive about that.

90 Q. Ask him if he slapped her more than once.

A. Perhaps twice or three times.

Q. Is he sure he slapped her twice?

A. Yes; he is positive he slapped her twice.

Q. Ask him if he didn't swear before the coroner he only slapped her once.

A. He said he did not.

Q. Ask him if Charley didn't tell her to come over to the house and go to bed.

A. He is not positive whether he said she should go to bed, but he is positive he told her to go down to the house.

Q. Ask him if he didn't swear before the coroner as follows, when he was asked this question: "Did he slap her more than once?" and he answered, "No, sir; once, just once."

A. He says he didn't say that.

Q. He is positive he didn't say that?

A. He is positive.

Q. Ask him if there were any marks or bruises on Mrs. Thiede's face from the effects of that blow he noticed—those blows.

A. He can not say that she did.

Q. Ask him if he saw her the next day.

A. Yes, he did.

Q. Did he see any bruises on her face that day?

A. No, sir; it was not.

Judge HOWAT. The jurors want to get shaved and get clean shirts when they want them.

The COURT. The bailiffs may take them in a body to the barbers.

Judge CHERRY. We have no objections to the bailiffs going with any of the jurors anywhere, so that they don't converse with anybody else.

91 JUROR. Could I be taken home by one bailiff?

Judge CHERRY. I have no objections.

Judge HOWAT. The defendant consents that any member of the jury may be taken in charge of a bailiff to his home to get any article of apparel, or any members of the jury to a barber shop for the purpose of being shaved or any other purpose, and for these purposes they may be allowed to separate.

Juror asks if they can't go to the Hot Springs to bathe.

Judge HOWAT. The court should instruct the jurors they must not speak with anyone about the case.

The COURT. The bailiffs must be very careful of this jury that no one will talk to them or say anything in their presence, and if you take one of them home you must accompany them and know during the entire time what is going on. It is an important case, and I don't want any trouble in that way.

Judge CHERRY. The defendant makes no objection to their attending to any little domestic affairs by way of telling their wives what they want, to look after their business, or any business affairs, just so they do not talk about the case; and the jurors won't do that if instructed not to do it.

The COURT. Let it be done in the presence of the bailiff.

The COURT. Gentlemen of the jury, understand that you are not allowed to talk with any persons about the case nor communicate either by sign or in any way whatever, nor suffer anyone to communicate with you about the case, nor talk with you, nor talk among each other about the case, nor to form any opinion until the case is finally submitted to you.

92 JUROR. Do I understand we can not talk about business at all in the presence of the bailiff?

The COURT. So far as your family arrangements are concerned, that may be done in the presence of the bailiff; but you have no right to talk about any matters——

Judge CHERRY. We will waive anything of business matters in the presence of the bailiff.

The COURT. The point is as to what the business is, or some party may step up and drop something here or there. I have had some trouble on this question and don't care to have it repeated, and in regard to newspapers the instructions given will continue during the entire trial.

Court adjourned until 10.00 o'clock to-morrow morning.

93 SATURDAY MORNING, *October 13th*, 1894—10 *a. m.*

The COURT. Poll the jury. Jury all present.

Judge HOWAT. I directed the marshal to have the car at 2.00 o'clock.

The COURT. The jury will have to return into court if they go down there.

JACOB LAUENBERGER on the stand:

By Judge CHERRY:

Q. Were you with Mrs. Thiede and Mr. Thiede on the Monday following the Sunday you spoke about yesterday?

(Objection as not proper cross-examination.)

The COURT. You may confine yourself to the examination in chief.

Judge CHERRY. The court would not hold my examination is limited to the time covered by the examination of the district attorney. That would be a very unfair restriction in the cross-examination. I have a right to go into this question of ill treatment fully on cross-examination.

Judge HOWAT. I have confined myself to one transaction. If he desires to call the witness to show he treated his wife kindly at other times, he can do it, but not in the cross-examination. He may answer that question. I have no objection to that.

A. He was with Mr. Thiede. He went to the vinegar factory and there found Mrs. Thiede, and they all went back together on Monday.

Q. Is that all the witness said?

A. Yes, sir.

94 Q. Say anything about what he brought back?

A. No, sir; only that they went back together.

Q. I will ask him what time in the day that was.

A. About one or half past one.

Q. In the afternoon?

A. In the afternoon.

Q. Ask him if he saw Mrs. Thiede around the house or around the premises anywhere in the forenoon of that day. Ask him if he saw any marks or bruises on her face at any time during that day.

A. No, sir.

Q. Were Mr. and Mrs. Thiede friendly and pleasant to each other during the time he was with them in the afternoon on Monday?

(Objection as not cross-examination.)

Judge HOWAT. I didn't ask him a word about that. I confined my examination to the one time; what happened that night.

Judge CHERRY. I want to say this to the court: This very inquiry, following up the next day, showing the relations of these parties and their conduct toward each other, is explanatory of every act he has proven before this jury as occurring the evening before.

The COURT. Counsel for the defense has made that a part of the defense, so far as having these little difficulties and afterwards being reconciled and getting along peaceably, and I think under the circumstances the cross-examination should be confined to the examination in chief, and then when you come to your defense you can recall the witness.

Judge CHERRY. The defendant excepts to the ruling of the

95 court, and states now that he proposes to prove by this witness that the relations of the defendant and his wife on the day follow-

ing the transaction which he has testified were friendly and agreeable as far as his observation went, and that he was with them a considerable length of time in the afternoon, and that he saw nothing at any time before this Sunday evening during the time that he lived there, from the 15th of March until the 30th of April, of the nature of a quarrel or a blow or of wounds or bruises on her face. I take it that part would be objected to because it don't refer to that particular time, and I put that in.

Judge HOWAT. That way of getting to the jury the matter the court has ruled out is unprofessional and unfair.

The COURT. I take it counsel knows that is not a proper statement. You may examine the witness.

Judge HOWAT. I withdraw my objection to the question.

Judge HOWAT. I claim the right to cross-examine the witness upon this branch of the case.

(Question read.)

A. If they would always be that way they would never have any trouble, he says; they were, and if they would be that way always, they would never have any trouble.

Q. Ask him if from the time they first went there to live until that Sunday evening that he spoke of, if he ever saw them engaged in any quarrel or fight of any kind.

A. I told him he must confine himself to what he saw, and he said he heard they had quarrels, but didn't see them.

96 Q. Ask him if he ever heard any noise, any quarreling noise, before Sunday evening.

A. No, sir.

Q. Ask him if he ever saw Mrs. Thiede with a bruised face or black eye while he lived there.

A. He saw one time she had a black eye.

Q. Ask him if he can remember when it was.

A. Shortly after he moved to the place; shortly after he went there.

Q. Ask him if he knows how she received that black eye.

A. No, sir; he does not.

Q. Going back to that Sunday evening, ask him how long it was after Charley Thiede went out of his house before the witness went over to the saloon, on the Sunday evening.

A. About half an hour or so.

Q. Ask him who was in the saloon when he went in.

A. Mr. Thiede and the little girl.

Q. Ask him where he was during that half an hour before he went into the saloon.

A. In his house; in his room.

Q. Ask him if Mrs. Thiede was there during that time.

A. She went out before that.

Q. Ask him if he saw Mrs. Thiede while he was over at the saloon that evening.

A. She came to the door while he was in the saloon and knocked, and Mr. Thiede told her to go home.

Q. Did Mrs. Thiede say anything?

A. All she said, "Open the door, I want to come in;" and Mr. Thiede said, "No, you can not come in."

Q. Was the door closed?

A. Mr. Thiede locked the door while he was in there.

97 Q. Which door did they go in at?

A. The door that they go down toward the house.

Q. Tell the witness that this is the south door of the saloon, and this is the door that goes down to the residence. Explain to him on this plat, and ask him what door it was she rapped at.

A. The door that goes toward the garden.

Q. Ask him if it would be that door.

A. He means the door that you go toward the garden. He says if that is the door that goes toward the brewery it is the door that leads to the street.

Q. Ask him if that door was closed when he went over to get a glass of beer.

A. He couldn't tell; didn't notice.

Q. Ask him what door he went into the saloon.

A. He went into the door that leads toward the garden.

Q. Ask him if that door was locked when he went in.

A. It was not. Mr. Thiede stood right in the door and spoke to him to come.

Q. He locked the door after he came in, did he?

A. Yes, sir; he locked the door after he came in.

Q. How long did he stay in the saloon after Mrs. Thiede rapped on the door?

A. Perhaps 15 minutes or so. He can't tell exactly.

Q. When he went outside did he say anything more than evening to Mrs. Thiede?

A. He didn't see her, but he heard some one running toward the house.

Q. Ask him whether he could hear any person.

A. He couldn't tell who it was.

98 Q. Was there a light in the house?

A. He can't tell for sure.

Q. Ask the witness if he is quite sure he stayed in his house as much as half an hour before he went over to Thiede's saloon after Thiede went out.

A. About half an hour; he can't tell exactly.

Q. Ask him if he didn't testify yesterday in his examination in chief it was about five minutes.

A. He says he is not sure; as long as he didn't consult his watch he couldn't tell how long it was.

Redirect examination by Judge HOWAT.

Q. What was the condition of Mrs. Thiede's hair that Sunday night when she came into the house, as to being down or not?

A. They were all in a disordered state.

Q. Was it up or hanging down?

A. They were hanging down.

(Judge Cherry moves to strike that out as wholly immaterial what the condition of her hair was when she came into his house.)

Judge HOWAT. We have shown that was one of the amusements of the defendant, to take his wife by the hair.

The COURT. He has a right to show her condition.

(Exception.)

Q. You say your daughter and son-in-law were in the house, and your wife, at that time?

A. They were all there—himself, wife, daughter, and son-in-law—all in there when Mrs. Thiede came in.

Q. Where is your daughter and son-in-law now?

99 A. This is the address of his son-in-law [showing paper].

Q. Are they in the Territory of Utah or not?

A. They are in Wyoming.

Q. What was the conduct of Mrs. Thiede to her husband as to being kind and good to him at all times, or otherwise?

(Objection as immaterial, irrelevant, and leading.)

The COURT. I understand counsel for the defense made the statement that she was a dutiful wife.

Judge HOWAT. Even if the jury should find him guilty, it is in their provence, if they find extenuating circumstances, to recommend that he be imprisoned in the penitentiary for life. I have a right to show there were no extenuating circumstances, and that this woman at all times never gave him provocation, but was uniformly kind and considerate of him.

The COURT. If there is any question on it I think it is admissable.

(Exception.)

A. She was good to Mr. Thiede.

Q. Now, on the Monday after this trouble in your house on Sunday evening, what, if anything, did Charles Thiede say to you about telling or not telling what had taken place in the house?

(Objection as immaterial.)

The COURT. He may answer.

(Exception.)

A. He didn't make any remarks about the day previous on Monday.

Q. Ask him if Thiede didn't tell him not to say anything about, on Monday, what he had seen.

(Objection as leading and immaterial, for even if he did say so it
100 would not impute a criminal motive. It would be commendable if he should want to cover up a family disturbance. We object as immaterial, leading, and having been answered.)

The COURT. He may answer.

(Exception.)

A. He didn't say anything to him on Monday, but Tuesday morning he came to him and told him not to say anything about what happened in the house.

Q. That was after his wife had been killed, was it not?

A. The morning after that.

Q. Ask him if he ever saw Thiede so good to his wife as he was that Monday before she was killed, so kind to her apparently.

(Objection as leading, suggestive, immaterial, and not proper redirect examination.)

The COURT. He may answer the question.

(Exception.)

A. He has never seen him that way before as he was that Monday.

Q. Ask him whether Charles Thiede, the defendant, did or did not bring him a bottle of whiskey and give it to him that day, Monday afternoon.

(Objection as immaterial and irrelevant. Objection overruled. Exception.)

A. About four o'clock that day he brought him a bottle of whiskey.

Q. How big a bottle?

A. (Witness indicates about four or five inches.) He says a flask of that kind costs 25c.

Q. What, if anything, did Thiede say to him about drinking it?

101 A. Yes; he gave it to him to drink.

(Question repeated.)

A. He said, "Here is a bottle of whiskey for you; take a drink out of it and fix up the pig sty."

Q. Did Thiede ever give you any whiskey before?

A. He did, he said, sometimes on a Sunday when he went to clean his horses. After he was through with it he treated him to whiskey or beer, whatever he might have called for.

Q. When did he drink the last of the whiskey?

(Objection as immaterial and incompetent.)

Judge HOWAT. I propose to show he didn't hear the outcry of this woman, because he had been drinking.

(Exception by Judge Cherry.)

A. He said that he had some of it left yet Tuesday morning.

Q. When did he take the last drink of it, Monday evening or afternoon?

(Objection as immaterial, irrelevant, and incompetent.)

(Objection overruled. Exception.)

A. He drank some of it about 11 o'clock or so, but he has no recollection of——

Q. Monday, when did he take the last drink of that on Monday evening?

A. He is not positive whether it is in the forenoon or afternoon, but it was at the time he came home from here.

Q. That is Tuesday. He got it Monday afternoon about 4 o'clock.

A. He didn't drink all of that whiskey on Monday. He drank some of it, but he cannot say——

Q. When was the last drink he took of it on Monday?

A. About 9 or half past 9, when he retired.

102 Q. Ask him if he ever heard Thiede and his wife quarrel except at this time—not see them, but hear them quarreling.

A. Yes, he heard them when he was in his garden oftentimes.

Cross-examination by CHERRY:

Q. When he was in the garden, ask him where they were quarreling when he heard them.

A. Either in the kitchen or in another room, he said.

Q. What garden did he allude to?

A. In their own garden.

Q. Ask him if he didn't state to me a few minutes ago he never heard them quarrel excepting that Sunday night.

A. He says he might have said so, but he didn't think so—that is, he don't remember that he said so.

A. Ask him if he has a distinct recollection of how many times he has ever heard them quarreling—before that Sunday night.

A. He cannot say as to the number of times.

Q. Was it more than once?

A. More than once, but how many times he could not say.

Q. Could he hear what they said?

A. He didn't understand them.

Q. Did they talk in English or German?

A. He said it was sort of a mixed up talk that he didn't understand.

Q. Do you remember what time of day he heard any of it?

A. He can't exactly say.

Q. Ask him if he knows they were quarreling, or might they not have been singing.

A. There was a sort of a row; not that they had a fight, but a row.

103 Q. Ask him how he knows they were quarreling if he didn't understand what they said.

A. He said he could understand partly that it was a quarrel from the way it sounded.

Q. Ask him if he was drunk Monday afternoon.

A. As long as he lives, he says, he was never intoxicated.

Q. Ask him if he drunk enough whiskey to make him intoxicated to any degree?

A. He took a glass, or perhaps two, in order that he might sleep sound; that is all.

Q. Ask him if he is in the habit of taking whiskey before he goes to bed every night.

A. No, sir; he is not. If he has not any he don't drink any.

Q. Ask him if he is in the habit of drinking, or has been for some time in his past life.

A. No, sir; he has not, he says.

Q. Ask him if he has not several times bought alcohol of Mr. Thiede. (Objection.)

The COURT. He may answer.

A. He did once; he is not positive, but perhaps once or twice.

Q. Ask him if he drank it.

A. Yes, sir.

Q. Ask him if any one else drank any of that whiskey out of that bottle that Thiede gave him.

A. No, sir.

Q. Ask him if he didn't give a drink of whiskey out of that bottle to a German friend of his that called that evening and went up to the Industrial Army with him.

A. He didn't give any of the whiskey.

Q. Ask him if he didn't help Mr. Thiede build a pig pen that afternoon, and this whiskey was given him after they got through the work.

A. He gave him that whiskey when he commenced building the pig sty.

104 Q. Ask him if he went to the saloon to get the whiskey, or whether Thiede brought it out to him where he was.

A. Mr. Thiede brought him the whiskey.

Q. Ask him if Thiede helped him to work on the pig sty.

A. He did a little and then went back to the saloon when anyone came there.

105 MARY LAUENBERGER, a witness sworn and examined for the prosecution, testified as follows:

By Judge HOWAT:

Judge HOWAT. I ask Mr. Cherry if he consents that Louis Gronosky act as interpreter for this witness.

Judge CHERRY. We have no objections.

Judge HOWAT. Do you consent? I ask you. I ask Judge Cherry whether he consents that this man shall act.

Judge CHERRY. We have no objections, and, of course, we consent.

Judge HOWAT. Do you consent? I ask you if you consent.

The COURT. If counsel consents, the record may show the defendant and his counsel consent that Mr. Gronosky act as interpreter for this witness. Proceed now, gentlemen.

Louis Gronosky, one of the jury, sworn as interpreter.

Mrs. Lauenberger sworn in the German language as a witness through the interpreter.

Q. What is your name?

A. Mary Lauenberger.

Q. Are you the wife of Jacob Lauenberger?

A. Yes, sir.

Q. Do you know Charles Thiede, the defendant, and his wife, Mary Thiede, before she died?

A. Yes, sir.

Q. When were you last at her house together before she was killed?

A. On Sunday.

Q. What time of the day?

A. Evening.

Q. Who came into the house first, Thiede or his wife?

A. She cannot positively say which one came in first, but Mr. Thiede and Mrs. Thiede and the little girl came in together.

Q. What happened between them when they were in there?

A. He told her that Mr. Thiede told his wife to go home to her house because she was drunk.

106 Q. What did she say?

A. No; I don't go home because you want to kill me.

Q. Was Mrs. Thiede drunk or sober at that time?

A. She didn't see it and she don't believe it.

Judge CHERRY. We object as to that.

The COURT. Let her answer the question.

Judge CHERRY. We ask that be stricken out.

The COURT. That may be stricken out.

Q. Was Mrs. Thiede at that time, in your opinion, drunk or sober?

(Objection, as calling for the opinion of the witness.)

The COURT. She may state whether she was drunk or sober.

(Exception.)

Q. Was Mrs. Thiede at that time drunk or sober?

(Objection. Objection overruled. Exception.)

The COURT. If she knows she may state.

A. She didn't see her drunk at that time and she never saw her drunk.

Judge CHERRY. We ask that be stricken out as not responsive to the question.

The COURT. The latter part is not responsive.

Judge HOWAT. Strike out that she never saw her drunk.

The COURT. The part that is responsive may stand. "She didn't see her drunk at that time" may stand. What follows may be stricken out.

Q. When Mrs. Thiede said she would not go home because he wanted to kill her, what did Thiede do to her, if anything? What was said or done?

107 A. He slapped her right and left and told her to go down and go to bed.

Q. How did he slap her as to hard or otherwise?

A. Hard; he hit her hard.

Q. Did Mrs. Thiede at any time show you her person, her body?

(Objection, as irrelevant, immaterial, incompetent, and indefinite. Objection overruled. Exception.)

Judge HOWAT. She only lived here since the 15th of March.

The COURT. As to that time she may state.

(Exception.)

Judge CHERRY. I want to caution the witness through the interpreter. She ought to be cautioned so as not to tell anything incompetent, and she ought to be cautioned to tell nothing, but strictly answer the question. None of us can tell what she says, and she may tell a great deal to him that is incompetent.

The COURT. The court has already instructed her.

Judge CHERRY. Will you instruct her now?

The COURT. You may instruct the witness to answer the questions strictly, and not tell anything but what is in answer to the questions.

A. Yes, sir.

Q. When was it she showed you her person?

A. About the first time when they came there.

Q. About how long before she was killed?

A. Perhaps a month or so.

Q. What part of her person did she show you?

A. About here [indicating].

(Objection, as incompetent, immaterial, and irrelevant. Objection overruled. Exception.)

108 Judge HOWAT. You asked that of the husband.

Q. Now, what was the condition of her person at that time?

The COURT. The question should be answered as it was asked.

Judge CHERRY. I want to save my exception.

Q. State what part of her person it was she showed you.

The COURT. Tell her to give the name of the part of the person that was shown.

A. The ribs.

Q. What was the condition of that part of her person as to being discolored or otherwise?

(Objection, as incompetent and immaterial.)

The COURT. She may state.

(Exception.)

A. Black and blue and congealed blood.

Q. Do you know how she got that injury?

Judge CHERRY. I want the witness to understand she is not to tell what somebody heard, but she must only tell from her own knowledge, because the court can see the position we are placed in.

The COURT. She may state what she knows of her own knowledge and not what somebody told her.

The INTERPRETER. I have told her that.

Judge CHERRY. Tell her that in connection with this question.

Question read.

A. Mrs. Thiede told her——

Judge CHERRY. That is exactly what I was expecting.

The COURT. She cannot say that.

Judge CHER'Y. I object to anything but what she knows of her own knowledge.

The COURT. She cannot state what Mrs. Thiede told her.

109 (Judge CHERRY moves to strike out all the evidence of this witness as given in regard to the exhibition of the person of the deceased, as it has been given to the jury through the interpreter.)

The COURT. That same question was ruled on yesterday.

Judge CHERRY. For the reason that the same is immaterial, irrelevant, and incompetent. It is not the same question in regard to this, your honor.

The COURT. Motion overruled.

(Exception.)

Cross-examination by Judge CHERRY:

Q. Ask the witness if she is in the habit of drinking intoxicating liquors.

A. She never drinks any whiskey or beer, but wine she does when she has any.

Q. Ask her if she does not sometimes drink alcohol.

A. She can't drink it.

Q. Ask her where she is now living at this time.

A. In the brewery. In the house of the brewery, where she first was when she came here.

Q. Ask her how close she was standing to Mr. Thiede when they had that quarrel in their house Sunday night.

A. She was in front of her house door.

Q. Which way was she looking?

A. Toward the garden where they were.

Q. After Thiede and his wife came into the house, ask her where she was at that time.

A. She was in the house.

Q. Ask her how close she was standing to Mrs. Thiede when Mr. Thiede slapped her.

A. Mrs. Thiede sat on the bed and she stood in front of it.

110 Q. Where did Charley Thiede stand?

A. Also in the room.

Q. Ask her how she knows he slapped her hard.

A. She saw him.
Q. She didn't feel it, did she?
The COURT. That is entirely improper.
(Objection as not cross-examination and trifling with the court.)
(Exception by Judge Cherry.)
Q. Did it leave any marks or bruises on her face?
A. No, sir; she didn't see any marks or bruises.
Q. Ask her if she saw her the next day.
A. Yes, sir.
Q. Ask her if she saw any marks or bruises on her face on Monday.
A. No, sir; she didn't.

111 Miss MINNIE NOBLE, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. What is your full name?
A. Minnie Noble.
Q. Are you a school teacher?
A. I was last winter.
Q. Were you a school teacher last April?
A. Yes, sir.
Q. Where did you teach school?
A. Murray.
Q. Do you know Charles Thiede, the defendant?
A. I know him; I am not acquainted with him.
Q. Do you know his little girl, Annie Thiede?
A. Yes, sir; she went to school all winter to me.
Q. Did you know Mrs. Thiede in her lifetime?
A. Yes, sir.
Q. Did you know of her death; of her being killed?
A. Through report; yes, sir.
Q. The Monday night on which her death occurred, do you know where Annie Thiede, the little girl, stayed?
A. She stayed at my home.
Q. That night?
A. Yes, sir.
Q. Ever stay there before with you?
A. No, sir; not over night.
Q. How long had she gone to school to you before that time?
A. She began in September.
Q. 1893?
A. Yes, sir.
Q. And had been continuously a pupil of yours up to this time?
A. Yes, sir.
Q. How far were you living at that time from where Thiede was?
A. I don't know exactly, but about two and a half miles.

Cross-examination by Judge CHERRY:

Q. How far from the schoolhouse?
A. Over a mile.
112 Q. You say you didn't know Mr. Thiede?
A. Why, I knew him, but I was not acquainted with him.

Q. Haven't you been to their house?

A. Yes; I have been to their house.

Q. You were at their house about a week before Mrs. Thiede was killed, weren't you?

A. Yes, sir.

Q. Spent one Sunday afternoon there?

A. No, sir; the evening.

Q. Was Mr. Thiede present?

A. Yes, sir.

Q. Didn't you meet him at that time?

A. Yes, sir.

Q. Talked to him?

A. Yes, sir.

Q. Had some music there at that time, didn't you? Didn't Mr. Thiede play on an organ or something?

A. There was a musical instrument there, but I wouldn't like to say whether it was played on or not. I don't remember.

Q. You took Mrs. Thiede and the little girl over there that evening from your house?

A. Yes, sir.

Q. They had been up to your place?

A. Yes, sir.

Q. Didn't Mr. Thiede treat the party that was there to wine that evening?

A. Yes, sir.

Q. Nothing unusual for one of your scholars to call on you, was it?

(Objection as incompetent and immaterial.)

Q. I would ask you whether little Annie Thiede ever called at your house before this time?

A. Yes, sir.

Q. I would ask you whether or not there had ever been any arrangement or any talk between you and Mrs. Thiede in reference to
113 little Annie coming to your house at any time to take music or painting, or anything of that kind?

A. Yes, sir.

(Objection as hearsay.)

Q. (By Judge HOWAT.) Were there any arrangements or talk between you and Thiede or Mrs. Thiede that she should go at this time or for a long time afterwards?

A. I don't know that there were any particular arrangements. She had asked me to give Annie lessons in painting. She admired my painting——

Q. When was it talked about that you should give her lessons?

A. Sunday afternoon.

Q. What time in the future was it talked of or discussed that you might give her lessons?

A. I told her I wouldn't be able to give anyone lessons until after school closed, and that would be sometime in June, and I would then give them if I could get a class.

Q. I will ask you when Annie Thiede came that day to stay with you, who did she say told her to go?

(Objection as leading and hear-say. Objection sustained.)
(Question withdrawn.)

Q. Now, Miss Noble, was there at any time ever any conversation of talk between you and Mrs. Thiede as to Annie coming to your place on this Monday?

A. No, sir.

114 JOSEPH M. BENEDICT, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. You are a physician and surgeon?

A. Yes, sir.

Q. Live in Salt Lake City?

A. Yes, sir.

Q. How long have you practiced your profession in Salt Lake City?

A. 24 years.

Q. Did you see the body of Mrs. Thiede?

A. Yes, sir.

Q. Can you state on what day of the month you saw it?

A. About the first or second day of May; I won't be certain; I think on the first.

Q. Describe to the jury if you made an examination of a wound in the throat of the deceased.

A. Yes, I examined it.

Q. State to the jury the character of that wound.

A. The wound in the throat was a large one, extending in a general way from ear to ear. There were two slighter ones above it, making three in all.

Q. The wound itself was not as you would say a regular one—that is, one that would be made by a single cut?

A. It was jagged in two places. The depth of the wound extended through the larynx and æsophagus to the bones of the neck.

Q. Did it sever the jugular vein on one or both sides?

A. Both sides, the veins and arteries both, including what is known as the sterno-mastoid muscle or principal muscle that supports the head.

Q. Did it sever the trachea, or what is known as the windpipe?

A. Yes, sir.

115 Q. Do I understand you that the cut was of the ligaments back to the vertebræ of the neck?

A. Yes, sir.

Q. Assuming that the deceased resisted this attack upon her, in what position do you think the wound would indicate the person who inflicted the wound stood with reference to her?

A. Undoubtedly behind.

Q. What part of the body would you say he held her by?

A. Naturally by the head—that is, by the hair.

Q. Then you say the party who inflicted that wound on this woman stood from behind, held her by the hand that didn't have the knife, around the head, and did this work with the other hand by the knife?

A. Yes, sir.

(Objection as leading. Question withdrawn.)

Q. You stated, doctor, that the person who inflicted the wound doubtless stood behind the victim, and held her with one hand by the head and inflicted the wound with the other hand; is that true?

A. Yes, sir.

Q. Would it be possible, doctor, or would it not, for this woman, after having received this wound, to articulate or to utter a word?

A. No, sir; absolutely impossible.

Q. Did you examine the deceased's person?

A. Yes, sir.

Q. State to the jury whether or not you found any bruises upon her person, and if so, where.

A. Yes, sir.

Q. Where did you find any bruises or marks of violence?

A. That question would include bruises or marks of violence?

Q. Yes, sir; other than the wound upon the throat.

A. Independent of that, the left thumb was nearly severed by a knife wound.

116 Q. The left thumb was nearly severed?

A. Yes, sir.

Q. State whether the wound was a recent one or not.

A. Recent; as recent as the cut.

Q. What else?

A. There were bruises about the body, about the ribs and abdomen.

Q. Of what character, cuts or bruises?

A. Bruises.

Q. What did they indicate as to how they were received?

A. It would be by a blow or fall.

Q. I will ask you to state whether a kick would inflict such a bruise or not?

A. Yes, sir.

Q. How many of these bruises were there about the hips and abdomen?

A. Four, as I remember them.

Q. Did you observe the face or eyes of the deceased to see whether there were any indications of violence upon the face or eyes?

A. Looking at the face you could readily see the left eye was bruised.

Q. Was that bruise a recent one or not?

A. My opinion is that it was a recent one, putting that and the other condition—that of bleeding to death—together.

Q. Could you state how recent?

A. I should say very recent. It probably occurred immediately before her throat was cut; before there was any opportunity for swelling, for blood letting would of course very greatly modify not only the swelling, but the consequent discoloration.

Q. From a wound of this kind you have described state whether or not it is true that the blood would nearly all be spent from her body.

117 A. I think it necessarily would, excepting what very little would be left—as much so as a beef.

Q. Now, what would be the tendency or effect of that in regard to bruises or marks on the body, as to making them appear less or to aggregate their appearance?

A. It would very distinctly modify them to make them less apparent.

Q. So that if this woman in her lifetime had bruises upon her body, face, or eyes; mere discolorations from a blow, the tendency of the blood letting would be to diminish the appearance of the injury?

A. Especially if it was recent; yes, sir.

Q. That would be the tendency of her bleeding to death in the manner she did?

A. Yes, sir.

Q. Could you say from an examination of this injury whether this cut from ear to ear was made at one time—that is to say, one continuous cut or not?

A. You mean both by one stroke of the knife?

Q. Made without withdrawing the knife from the neck?

A. No, sir. It could not be made; that is what I mean, it could not be made with one stroke of the knife.

Q. Could it be made without withdrawing the knife from the wound?

A. No, sir.

Q. State to the jury whether the cut indicated where the incission was or the incissions of the different wounds.

A. Yes, sir.

Q. State to the jury whether they were all on one side or not, the points of incission of the different wounds?

A. One was on the right side, superiorly to the main cut; the other on the left side, inferiorly.

118 Q. In what direction did these cuts go?

A. The left one, superiorly, made a notch above the main wound, suppose the main wound to be horizontal.

Q. That was on the left side?

A. That was on the left side.

Q. Which direction did it go, left to right side?

A. Left to right below on the right side.

Q. The other point of incission?

A. That is the main one, then another one; then there were two marks above that.

Q. Were these deep?

A. No; not deep.

Q. These that were made on the right side? *Q.* Those that were made on the right side where the point of incission was made on the right side, these were slight wounds?

A. No; they were not slight wounds. They were cut clear through.

Q. Which direction did the wound go from the point of incission?

A. From the throat toward the ear, or the ear toward the throat.

Q. I mean on the right side.

A. The notch was on the lower side of the wound.

Q. They were not straight?

A. No, sir.

Q. Was it from the throat backwards or forwards?

A. I understand you mean from the middle line toward the ear. It was from the middle line toward the ear.

Q. Backward?

A. Yes, sir.

Q. And the one on the left side, was it from the left ear or near it around the throat toward the right side?

A. Yes, sir.

Q. So that from the point of incission in all the wounds they all travelled in the same direction, the cut did?

119 A. From left to right; yes, sir.

Q. Of course, after receiving that wound death was almost instantaneous, was it not?

A. Perhaps a minute or two; about that, I should think.

Q. How long would consciousness exist after a wound of that kind?

A. A very little while.

Q. Almost instantaneously?

A. Perhaps a minute; it would be almost instantaneous.

Q. That is, unconsciousness would follow?

A. What I mean by that is that the patient, under the circumstances, not being able to articulate, might raise her head or perhaps open her eyes; it would be hard to say whether the patient was conscious or not at that time.

Q. What I want to know is that the flow of blood from the brain would result in almost instantaneous un'sciousness, would it not?

A. Yes, sir.

Q. But you say while consciousness might remain for a minute or less, it would be impossible for her to articulate after receiving the wound?

A. After that would it would be impossible.

Q. Now, taking into consideration the fact that the blood left the body almost entirely, as you say, if this body was clothed in ordinary clothing and exposed outdoors, how long would it take for the hands or extremities to become cold after receiving that wound?

A. That would depend upon whether—if the temperature was somewhat cool the hands or extremities of the fingers would be cold in 20 minutes, probably; perhaps less than that.

120 Q. In what time would the body become cold?

A. All the thicker portion of the body through the abdomen and chest would probably take, without any artificial means, eight or ten hours.

Q. To become absolutely cold?

A. Yes, sir.

Q. But the heat of the body would begin to decrease?

A. Immed'ately.

Q. And while it would not be absolutely cold the heat would be decreasing so that the body might feel cold in what time to the touch?

A. With slight clothing on?

Q. Or fair clothing on, the night cool.

A. It would be almost cold in an hour.

Cross-examination by Judge CHERRY:

Q. When did you make the examination of this person?

A. Either on the first of May or second.

Q. Which was it, the first or second?

A. I think on the first day or May; that is my impression.

Q. Was it the first day of the coroner's inquest, or the second day the inquest was held.

A. I think it was the first day; I wouldn't be positive about that.

Q. What time in the day was it you made the examination?

A. The forenoon; I went down to Mr. Skewe's undertaking establishment, down here.

Q. If that inquest was not commenced until about 12 o'clock, then would it be the first or second day? If it was commenced about 12 o'clock on May 1st, and continued until the next day, then it would be the second day of May, wouldn't it?

A. Yes, sir; it would then.

121 Q. Have you any way of refreshing your recollection?

A. I made no notes of the matter whatever. I know it was about that time. I have a way, too. If I am not mistaken, it was just three days after my 50th birthday.

Q. What date would that fix it?

A. The 29th of April was my birthday, the second would be the 30th, the third would be the first of May. I think that is correct.

Q. The 29th was your birthday, and this was the third day afterward?

A. Yes, sir.

Q. The 30th would be the first day after, the first would be the second day after, and the second day of May would be the third day, would it not? Does that refresh your memory?

A. Yes, sir.

Q. If the evidence before the coroner commenced on Tuesday afternoon, May 1st, 1894, what would you say as to the day you made the examination?

A. That morning, I think, before the inquest was held.

Q. Who was with you, Doctor?

A. I don't remember—there were several in the room at the time.

Q. Any other physician?

A. I think not.

Q. That is the only examination you made?

A. That's all.

Q. About how much time did you devote to the examination of the person of Mrs. Thiede?

A. Oh, I suppose half an hour in the room, altogether.

Q. Was she dressed in the usual clothing she is supposed to have worn?

A. Naked.

Q. Her clothing had been removed before you saw her?

A. Yes.

122 Q. You didn't see any of her clothing?

A. No, sir; not any.

Q. Now, you stated that the person who inflicted that wound stood behind the deceased; did I understand you to so state?

A. That would be my opinion.

Q. That is merely an opinion?

A. But an opinion, of course.

Q. He may have stood at the side of her, may he not?

A. Yes, sir.

Q. And he may have stood in front of her?

A. Yes, sir; he could have done it.

Q. It would depend altogether which way he held the knife, wouldn't it, as to the manner of the cut and which way they were directed if he was standing in front of her? Supposing that pencil was——

A. Yes, sir; back handed.

Q. If he stood in front of her couldn't he have caught her by the top of the head and cut her throat in that manner from left to right? As far as the wound is indicated, couldn't he have stood in front of the person holding the knife in his hand and grasping it that way, and struck out in that manner, and made these wounds in the throat coming from the left side toward the right?

A. Standing facing her?

Q. Yes, sir.

A. No, sir; I don't think it would be possible to do that.

Q. Could he have stood at the side of her and held the knife in that manner? Stood at the side and struck in and cut toward him?

A. He could if standing a little behind the left or right shoulder; it could have been done.

Q. If he was standing at her left side he would have cut from him?

A. Cut with the arm around the neck. I looked upon it that way as giving the most purchase to a blow of that kind.

123 Q. I will ask you if it would not be not only possible but probable and reasonable that he could have held her; that person who inflicted the injury could have held the deceased by the clothing; by the back of the neck?

A. No, sir; I should think not.

Q. Or held her by the shoulder, caught her by the shoulder, by the clothing, either by the left shoulder and turned her around in such a manner as he could have inflicted those wounds with his right hand standing at her right side?

A. Not to make a wound of that character, I don't think he could. I am judging from the extent of the wound and others I have seen.

Q. Describe the manner in which you examined the extent of the principal cut. Just explain to the jury how you did that.

A. I stood and looked on, pulled the wound open, put my fingers in there and showed it to those that were standing about me. I think the coroner was one, and there were several there, and I showed them where the larynx had been cut through, and if I remember rightly showed them or tried to show them the vocal cords.

Q. Was the trachæ entirely severed?

A. Trachæ and œsophagus and clear to the bones of the neck—clear to the vertabræ I mean.

Q. What would be the depth of that wound measuring from the front part of the neck directly backwards?

A. Perhaps two inches, the fullest depth, about that—that is, in a person of her size; she was a very small woman.

124 Q. How far below the chin, about, was the principal wound?

A. Right directly through between the hyroid and thyroid cartileges.

Q. Can you express that so that the jury can understand it?

A. That is as near as I can tell you; just at the top of the Adam's appie.

Q. That was the principal wound?

A. That was the big one that extended from side to side.

Q. Did it sever all the principal arteries of the neck?

A. Just the principal arteries, the common carotid artery.
Q. On both sides?
A. There is only one on each side.
Q. It severed them both?
A. Yes, sir.
Q. And it severed the principal veins of the neck?
A. Yes; the two jugulars on each side.
Q. They were both severed?
A. Yes, sir.
Q. In what position from that principal wound was the smaller wound?
A. Just a little above; about a quarter of an inch apart.
Q. How many of those were there?
A. Two just above the main wound.
Q. Which side were they on?
A. Left side and above the main wound.
Q. The main wound, you say, had the appearance of having been made by a double stroke?
A. No question about it.
Q. Did it seem to be cut out at one time in one place and another blow commencing and carrying it on further, or how?
125 A. I should think it was sort of a see-saw arrangement; probably three strokes. That is as near as I could explain it; that is my theory.
Q. Did it have the appearance—the edges of the wound—of having been inflicted with a sharp instrument?
A. Yes, sir; decidedly.
Q. The skin and edges were clear cut, were they?
A. Clear cut.
Q. Not ragged or torn?
A. Not torn; there was a notch up here and a notch down there; I don't know how to explain it.
Q. Just explain it by words as much as you can.
A. I have as much I can. On the left side there was a cut, say half an inch in length, which, of course, would leave a V-shaped piece hanging down, and on the right side below was a similar V-shaped piece with the cut extending that way, that is in addition to the original straight one.
Q. You can illustrate it so the jury will understand.
A. I am a poor hand at anything of that kind. If we suppose this to be the cut—that is, the original cut made with one stroke—then I mean that a second stroke reaching from the left here superiorly would cut a notch in my handkerchief leaving the V-shaped piece hanging down; as it went along it cut into the other cut; as it went along and crossed here it cut the other way, leaving on the under side a V-shaped piece. That is as near as I can get at it.
Q. But all those cuts indicate it being done with a sharp instrument.
A. There is no question about that.
Q. Which thumb was it, you say?
A. The thumb of the left hand.
126 Q. What part of the thumb?
A. Right through the fles'y portion, between the thumb and index finger or palm of the hand.

Q. How deep?

A. Nearly severed the thumb.

Q. Cut to the bone?

A. Yes, sir.

Q. Did you examine that wound to see how deep it was?

A. Yes, sir; pulled it open.

Q. I will ask you if a person receiving such injuries as that were to have surgical aid at once, if there would be any possibility of saving their life?

A. Not in the world—if the surgeon stood right alongside of her at the time the injury was inflicted.

Q. You stated it would be impossible for a person receiving such injuries to articulate after receiving them?

A. Yes, sir.

Q. Would a body after death, from receiving such injuries as you describe, on being suddenly moved or violently moved, would any sounds proceed from the body—the cadaver?

A. From the cut end of the trachea?

Q. Yes, sir.

A. It might do so.

Q. It is a fact that there is a certain amount of air always retained in the lungs that does not leave at death?

A. Yes, sir.

Q. Called the residuum?

A. Yes, sir.

Q. And also reserve air?

A. That could be by moving or pressing upon it, especially if there was liquid over it. It could be made a gurgling sound, or perhaps a sibilant sound that could be noticed.

Q. Caused from the blood plasm or blood film forming in the
127 trachea, and the expulsion of air would make the noise?

A. Yes, sir; like blowing a soap bubble or something of that kind.

Q. It is not an uncommon thing for sound and noise to proceed from a cadaver?

A. Not at all.

Q. And wouldn't it be especially more so if the trachea was severed—from a violent movement of the body?

A. That would depend upon whether the terminal end of the trachea was covered or partially covered with fluid of any kind.

Q. If it was partly covered with a blood clot?

A. Yes, sir; or membranes or anything of that kind that would close it enough so as to tend to make a sound.

Q. And that would be apt to occur on a sudden or violent movement of the body, would it?

A. Yes, sir; it could occur.

Q. The bruise you saw on the eye. I will ask you if that might not have been caused by the mere settling of the blood around the eye—that is, would it be hard to distinguish whether it had been caused by a blow or something else?

A. You mean whether it was of a post-mortem appearance?

Q. Yes, sir.

A. No, sir; it could not be post-mortem appearance under the conditions.

Q. There would be no trouble in distinguishing between a post-mortem appearance and a bruise received before?

A. You would only have one discoloration from a post-mortem appearance.

Q. Was there more than one discoloration in this?

A. You could have but one discoloration from a post-mortem appearance; that is due to decay.

128 Q. Isn't it sometimes due to a settling or congestion of the blood in the capil'aries of the skin around the eye? Isn't it frequently the case in cases of death——

A. Not from as thorough a bloodletting as that; the blood is not there to settle.

Q. From even a wound as you have described, the blood does not immediately leave from the capil'ary circulation?

A. Almost entirely. Of course there is some left, but the moment the pressure from the heart's action ceases—that is, that pressure exerted through the heart and arteries even to the smallest radicals is removed.

Q. I understand all the blood vessels were severed?

A. Yes, sir.

Q. And the blood at that time in the head of the deceased would not be influenced by the action of the heart?

A. It would escape right at once.

Q. Just run out—the action of the heart would have nothing to do with forcing that out?

A. Not at all.

Q. Then would that necessarily cause the capil'ary vessels to deplete themselves immediately?

A. Instantly.

Q. There would be no settling of blood around the eye, as we commonly call it?

A. If that were the case it would have been both eyes and not one.

Q. Wouldn't that depend a little upon the position of the body at the time of death; wouldn't the law of gravitation——

A. It is true you get a static congestion after a length of time, but that would require 48 hours or more.

Q. It was about forty eight-hours after, you saw it?

A. Yes, sir.

129 Q. Now, would it make any difference if the person was lying on her face as to whether there would be a probability of the congestion of the blood around the eye—lying on her face, on her left side, with the left side face down?

A. For what length of time?

Q. We will say for one or two hours.

A. No, sir; it would not affect it at all.

Q. Wouldn't the natural gravity of the blood flow and settle there quicker than if they were lying on their back with the face turned up?

A. Yes; it would do it quicker.

Q. The tendency would be more in that direction?

A. Yes, sir.

Q. What is the extent of the bruises you saw; discolorations on the body of the deceased?

A. They were small spots like half a dollar, four or five of them; I don't recall them now.

Q. All on one side?

A. They were scattered across in the abdominal region, above the navel and over the ribs. I simply noticed it. There were several, too, upon the thighs.

Q. Of the same character?

A. Yes, sir; the yellowish green discoloration that characterizes a bruise.

Q. You couldn't tell by looking how the bruises were received?

A. No, sir; as I say, it might have occurred from a blow or a fall.

Q. And if they were of a greenish bluish cast, you couldn't tell how long they had been inflicted?

A. Inflicted within a week, probably?

130 Q. Isn't it a fact that a bruise will show on some persons for a much longer time than that?

A. Yes, sir.

Q. It would depend upon the person?

A. Yes, sir; and the character of the bruise. The discoloration is due to a rupture of those smaller blood vessels you were speaking of, and the extent of it and depth of color depends upon the amount of extravasated blood—that is, the blood poured out or soaking through the tissues, you might say.

Q. Isn't the length of time they are visible dependant somewhat upon the physical vigor of the person?

A. Without question.

Q. A person who is strong and vigorous, their circulation is usually strong enough to carry that away and absorb it quicker than in a person of more delicate nature and condition?

A. Yes, sir.

Q. If any one was standing as you describe in your first examination behind the person who received the injury and with the right hand inflicted the wound you have spoken of and to the extent you have described, would the arm or hand of the person be stained with blood, or the clothing, the right hand and arm?

A. Behind the patient?

Q. If the person stood behind as you describe and reached around and sawed this throat, whether or not a person could do that without receiving blood stains on the right hand, clothing, and arm?

A. It would be impossible.

Q. You mean it would be impossible for him to do it without receiving blood stains?

A. Without being covered with blood, for the jet would probably
131 reach six or eight feet or more. It would be impossible to make it quick enough to get out of the way.

Redirect examination by Judge HOWAT:

Q. You mean the hand that held the instrument and inflicted the injury?

A. Yes, sir.

Q. Not the hand that held the head?

A. Not at all.

Q. You were asked whether it was possible for a person standing at the side of this woman to have inflicted the injury, but didn't couple that with the qualification, if this woman resisted? State whether in your judgment it is probable that if this woman resisted to the utmost of her ability that any person could inflict this wound by standing at her side?

A. I should think not, if the patient was resisting.

Q. If the person were resisting to the utmost of her ability?

A. I should think not; I should think the person would be behind, probably with the knee in the small of her back in this way. Not satisfied with one cut—it was a powerful hand and arm that did it—but, as I said, there were certainly two minor cuts above that; you might call them scratches on the skin of the left side, but one cut was drawn directly across. There was then another one extending obliquely that is where I tried to describe these little V-shaped pieces; that is what lead to the theory there were two cuts at least. The head must have been violently pulled backward, without question. The party was struggling, for the reason the knife had been drawn directly through the left hand in that way.

Q. You speak about these jagged cuts with a movement like that?

A. That is not my idea yet. Say this is the first one; that is the
132 straight cut. Now, as I said, here is the evidence of another cut. The V-shaped piece above on the left side and the V-shaped piece below on the right side. That makes it all the more probable the party inflicting the wound stood behind the patient. That is but a theory, gentlemen.

Q. You stated to the jury it was a strong arm and hand that inflicted this wound?

A. Yes, sir.

Q. Why did you say that?

A. On account of its depth and passing through the cartileges, and clear, as I stated, to the bones of the neck.

Q. Have you observed the defendant since he came into the court room?

A. Yes, sir; I have known him.

Q. State to the jury whether he is a strong, powerful man, or otherwise.

(Objection, as immaterial, irrelevant, and incompetent, especially in the manner in which it is put, as though there were not thousands of strong men in the world besides the defendant, Charles Thiede.)

Judge HOWAT. I want the record to show his physical condition. It is singular I can't show his physical condition after the doctor has said it required a strong, powerful hand to inflict this injury.

Q. Didn't you say you were acquainted with him before he came into court at all?

A. Yes, sir.

The COURT. Did you know his condition at that time?

A. Yes, sir; I have known him for years.

The COURT. The question is proper.

(Exception.)

133 Q. I will ask you how long you have known the defendant?

A. Several years.

Q. Do you know what his physical condition was about the last of April or the first of May, 1894, or prior to that time?

A. Yes, sir.

Q. State to the jury what it was as to his being a strong, powerful man or otherwise.

(Objection, as immaterial, irrelevant, and incompetent.)

The COURT. He may answer.

(Exception.)

A. I should call him a strong, powerful man, as much so as anyone of his physique, weighing about 200 pounds or over. That is, at least of the average strength, is the only way to put it.

Q. Is he a man of more than average size and weight?

A. I should think not.

The COURT. It is not necessary to go into that any further.

Judge CHERRY. We take an exception.

Q. What was the cause of this woman's death?

A. Hemorrhage.

Q. Arising from what?

A. From a knife wound inflicted upon the throat.

Q. This wound you have described to the jury?

A. Yes, sir.

Q. Counsel has asked you whether it would be possible for a noise to be made by air escaping through this woman's throat. What sound would that make?

A. As I said, something of a sibilant sound, or like blowing soap bubbles. That is as near as I can describe it.

Q. Air escaping from a tube?

A. That is covered with a liquid or perhaps some light membrane.

134 Cross-examination by Judge CHERRY:

Q. Isn't there a great many strong men you know of in this part of the country?

A. Yes, sir.

Q. Many men you know of strong enough to infliet a wound such as that, are there not?

A. Thousands.

Q. A person of what you call ordinary strength, a man of, say, 25 to 40 years of age, in good health, that would not weight over 130 pounds, could inflict such a wound as that, could he not?

A. Yes, sir.

Judge CHERRY. We now ask to strike out all that part of Dr. Benedict's testimony pertaining to the physical strength and appearance and agility of the defendant.

(Motion overruled. Exception.)

The COURT. Gentlemen of the jury, the hour for the jury to visit the place at Murray has been changed to 2.00 o'clock. The car will be on Main and Second South streets at that time. When you repair to that place you have no right to talk about the case among yourselves, or suffer any person to talk to you about it in any way, shape, or form, excepting so far as the officer in charge of you is instructed by the court to point out the place to you, but other than that, you have no right to discuss the question or anything about the place.

The COURT. I request counsel should decide upon some person to do this, to point out the place.

(Counsel agree on Ab. Dyer, deputy marshal.)

Judge CHERRY. I would inquire of counsel now, if he and I go down, if he would have any objection to our speaking to the deputy.

(No objection.)

135 The COURT. The record may show that counsel on both sides want no one to go there excepting by consent. The court has no objection to the defendant going, but will make no order. He may do as he sees proper. The defendant may go if he desires.

(By consent of counsel the court reporter is permitted to go.)

The COURT. You must not talk, under any consideration, about the case. Understand that, gentlemen, and heed the instructions that have been given in regard to newspapers.

Judge HOWAT. It would be proper to instruct the jury that the object of going there is not for the purpose of viewing the premises for the purpose of evidence in the case, but simply to enable them to understand the evidence introduced.

The COURT. Simply to enable them to understand the evidence.

Judge HOWAT. I understand Judge Cherry to say Mr. Steele may act instead of Mr. Dyer, so that we can conclude the matter now, as the party who is to point out to the jury the several objects.

Judge CHERRY. I will agree on Mr. A. H. Steele.

The COURT. By consent of counsel on both sides he may be sworn.

A. H. STEELE sworn.

The COURT. The bailiffs may take the jury to the car at 2.00 o'clock promptly, and in a body, and I want to further instruct that the bailiffs must not allow the jurors to separate. The jurors on the panel must be kept in a body.

After you return from Murray you must return to the court room.

136 The court will now take a recess until the jury returns. The jury may retire before the charge to the bailiffs. The court will simply take a recess until the return of the jury.

SATURDAY AFTERNOON, 4.40 P. M.

The jury returned from Murray and were polled by the clerk.

Judge HOWAT. I understand the jurors would like to be taken to the springs for a bath.

Judge CHERRY. There is no objection to that.

The COURT. Gentlemen of the jury, you will heed the instructions that have already been given you. The court is about to adjourn until Monday morning at 10 o'clock, and in the interim you have no right to talk about the case to any person, nor suffer any person to talk to you about it, nor communicate with you in any way whatever; nor have you any right to read any articles in the newspapers which has any reference to this case whatever, nor talk to or consult with each other or communicate with each other about the case until it is finally submitted; and if the bailiffs take the jury to the Hot Springs to-morrow you will see to it that no persons will communicate with the jury and that no persons will talk in their presence, or in the hearing of the jury, about the case; nor are you allowed to allow the jurors to separate from each other, nor are you allowed to let the jurors bathe with other parties. If they go there they must bathe by themselves. There must be no other persons in at the

time. Jurors will take notice that if there are others in the bath, if it is a public bath at the time you get there, you must take a bath by yourselves.

137 Judge HOWAT. Are you going to the Sanatarium or the Hot Springs?

Juror CARTER. I suppose we could get accommodations here at the Sanatorium that we could not get out there.

The COURT. I understand counsel consent to their bathing here?

Judge CHERRY. Yes, sir.

Judge HOWAT. They can separate and go in separate rooms.

The COURT. Yes.

HOWAT. There are different sized rooms there and I think it would be better to go there than the Hot Springs.

(Bailiffs sworn.)

Judge HOWAT. It was agreed that they should go to the Sanatarium.

The COURT. They may be taken there in a body, and such of them as want to bathe may do so. Counsel also consent that where the jurors wish to go home they can go. The instructions given the other day apply to the proceedings all through the trial. But they must be accompanied by a bailiff.

Judge CHERRY. Very well.

Court adjourned until Monday morning at 10.00 o'clock.

138 MONDAY MORNING, *October 15th*, 1894.—10.00 *a. m.*

Judge HOWAT. If there are any witnesses present who have been subpœn'ed in this case they must retire from the room.

Judge CHERRY. I would like that no witness be discharged by the court, as I may want to call them.

The COURT. Not any have been discharged.

CHRISTIAN STRYKER, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Judge CHERRY. The defendant objects to this witness testifying, for the reason we did not know he would be a witness until the second day of this trial. This is one of the witnesses I particularly desired to have knowledge that he would be called. We have had no opportunity to impeach this witness's reputation. The list of witnesses was furnished us with his name omitted, and no showing has been made that it is newly discovered evidence on the part of the prosecution.

Judge HOWAT. I have a right to call a witness without notifying him. I was not under the slightest obligation, morally or legally, to notify him four days ago.

The COURT. The court has so ruled.

(Exception.)

Q. What is your name?

A. Christian Stryker.

Q. What is your age?

A. I am in my 50th year.

Q. Where do you live?

A. My home is in Illinois.

Q. Where are you staying at present?

A. Salt Lake City.

Q. Do you know the defendant, Charles Thiede?

A. Yes, sir.

139 Q. Did you know his wife in her lifetime?

A. Yes, sir.

Q. Did you ever work for him?

A. I worked for Charles Thiede in 1891, in the months of May and April.

Q. Worked for him any since that time?

A. In December last and January of this year I worked for him.

Q. December, 1893, and January, 1894?

A. Yes, sir.

Q. Did you live at the house?

A. I boarded with them; yes, sir; and slept in the same room where he slept in the saloon.

Q. You may state to the jury what the treatment of the defendant to his wife was when you were there in 1891.

A. It was very brutal.

(Objection as calling for a conclusion and the time being too remote to have any connection with this matter.)

Q. What was his treatment of her in 1891, and state what you saw and heard him do.

(Objection as calling for a conclusion.)

The COURT. He may state what he saw between the defendant and his wife.

(Exception.)

A. His treatment towards his wife was very brutal, especially at meal time. On one occasion—I say his treatment towards his wife was very brutal.

Judge CHERRY. We move to strike that out.

The COURT. That may go out. State what you saw and what was said and done.

Judge CHERRY. We ask the court to instruct the jury to disregard that remark.

140 The COURT. The court has already ruled that be stricken out.

Q. What was the treatment of the defendant to his wife as to being kind or otherwise?

(Objection as calling for a conclusion.)

The COURT. He may answer the question as stated by the court. State what was said and done between the parties.

A. He would call her vile name.

Q. What would he call her?

A. A whore and a slut.

Q. Was that in your presence?

A. In my presence at the table.

Q. At meal time?

A. At dinner, and at one time he got up and slapped her, and he threatened her then, to kill her then, right there at the table. There were two more men beside me at the table at that time, and when I spoke he told me to shut up, I had nothing to say.

Q. That was in 1891?

A. 1891.

Q. State to the jury whether or not he struck her or slapped her at any other times.

A. Not that I saw at that time that I worked.

Q. I understand, from what you stated, you took your meals there, but didn't live in the house?

A. I didn't sleep in the saloon at that time. At that time I slept over the brewery, in 1891.

Q. In 1894, in December, 1893, and Jan., 1894, state what, if anything, he said or did to his wife then that was unusual.

(Objection as leading and suggestive.)

The COURT. He may state.

(Exception.)

141 A. In 1893 and 1894 I ate at the same table with them.

(Objection as not responsive, and move it be stricken out.)

The COURT. He may state what was said and done while he was there.

A. In the 31 days I was there we ate two meals peaceably, and that was Christmas and New Year's dinner, and I begged Charley that morning not to make any disturbance, because it was a holiday.

(Objection as incompetent. Exception.)

The COURT. The witness has not stated there was any improper occurrence.

Q. You state in the 31 days you were there in December, 1893, and January, 1894, you only ate two meals in peace?

Judge CHERRY. We ask that go out as a conclusion and stating no facts.

(Objection sustained.)

Q. How many days were you there during December and January?

A. 31.

Q. Did you eat any meals there during that time?

A. Yes, sir.

Q. What was the relation existing between the defendant and his wife at meal time as to being pleasant or otherwise?

(Objection as calling for a conclusion.)

The COURT. He may answer.

(Exception.)

A. It was like this: When we were seated at the table of course there was a conversation of some kind.

The COURT. The question was as to being pleasant or otherwise.

A. It was unpleasant on Thiede's side.

142 Q. What did Thiede say and do at these meals?

A. He would insult his wife.

The COURT. That may be stricken out.

A. He would tell her to shut up. He would say in German, which means, shut up, you old whore.

Q. What other names, if any, did he call her?

A. He would call her a whore, or a bitch, and tell her she drives him mad.

Q. State to the jury whether that occurred frequently or otherwise during the meal time?

A. It was about as usual as the meals were. On one occasion he got up——

The COURT. State what occurred.

A. On one occasion, after the knives were sharpened, he had his knife in his hand and rapped down on the table and said: "Shut, up, now or I'll cut your throat."

(Objection as making a voluntary statement when not asked the question as to what was said and done at the meal table.)

The COURT. The court instructed the witness that he should state what was said and done between the parties.

Q. Now, you speak of knives being sharpened, when was that?

A. I think it was the week after Christmas.

Q. What knives were they that were sharpened?

A. Twelve table knives and a bread knife and an old butcher knife and one big butcher knife.

Q. Where was the bread knife used?

A. In the saloon to cut lunch, and in the house at times.

Q. Where was it usually kept?

A. On the lunch counter.

143 Q. How long a knife was that?

A. About that long.

Q. Give the length in inches if you can.

A. I couldn't state exactly how many inches it was long.

Q. Give your best judgment.

A. It was a light bread knife.

Q. And the other one was an old butcher knife?

The COURT. Give as near as you can the length.

A. I should say 12 to 14 inches long.

Q. You may state whether at that time the defendant said anything in relation to any one of those knives, or did anything with it.

A. When he sent me to sharpen the knives he brought me a table knife and bread knife, and two butcher knives and five pocket knives, two to five bladed.

Q. After they were sharpened did he say anything about any particular knife?

A. After I brought them back from the grindstone he said they were not sharp enough, and I had to put them on an oilstone and fix them smooth and sharp, and I asked him why he wanted the table knife so sharp, and he said he wanted the knives sharp, and he wanted to use one that would cut, and he told me to carry them to the house to the woman, and the best butcher knife, that was the Wilson knife, he said, this one I want to lay aside. I want neither you nor the woman to use that, I want that for myself, and he laid that under the lunch counter.

Q. State whether during the time you were there in December, 1893, and January, 1894, the defendant used violence toward his wife; I mean not violent language, but violent acts. If so, state what he did.

144 A. On one occasion at breakfast, after the knives were sharpened, there was a conversation about the meal in the morning and she talked very pleasant, and he told her to shut up; and she said, "Charley, can't I say a little something?" She said, "Charley, can't I say something once in a while?" and then he had his knife like this, and he hammered on

the table and said, "Shut up, or I'll cut your throat," and then she took a cup of coffee and bun and walked into the kitchen and choked it down there.

Q. At any time was there anything said by the defendant to you in regard to his wife as to whether or not he was satisfied with her? If so, state what he said.

A. On several occasions when we were reading the paper in the evening, it was at the time the Irvine divorce case was in progress, he asked me questions whether I didn't think he could get a divorce from his wife.

Q. What reason, if any, did he give as to why he wanted a divorce from his wife?

A. He said she ruined his business; that she was not a proper wife for him.

Q. Why?

A. That she was too good and honest a woman for his purposes.

The COURT. State what he said.

A. Those are just the words Thiede said to me in the saloon. Then he said to me, I must get rid of my wife in one way or the other, because if I had a wife that would flirt with the men and was bold and would try to get money out of them and rope them in when a man comes here with $25 or $30—sometimes they come with $100 in their pocket—then I could make money.

145 Q. When was that with reference to being before or after New Years?

A. That was about the first week after New Years.

Q. What was the treatment of the defendant's wife to the defendant as to being kind or otherwise?

A. As kind as ever I have seen a woman treat her husband.

(Objection as immaterial, irrelevant, and incompetent. It does not tend to prove any motive or guilt or have any tendency to connect the defendant with this crime.)

The COURT. The question is admissable.

(Exception.)

Q. State whether or not the defendant ever struck his wife when you were there?

A. He did at one time, the last time I worked there; one time I seen him slap her.

Cross-examination by Judge CHERRY.

Q. When did you first go to work for Mr. Thiede?

A. The first time, I think it was in May, '91; I am not postive as to the date, but I think it was May, 1891.

Q. How long did you work for him?

A. I worked for him then about 20 or 25 days, I can't tell exactly.

Q. What did you do?

A. I did carpenter work and general mason work for him, dug a cellar, hauled gravel, built fence.

Q. Was his wife there at that time?

A. Yes, sir.

Q. She hadn't gone to Germany then?

A. That was before.

Q. Before she started to Germany?

A. Yes, sir.
Q. Where did you board then?
A. With Mr. Thiede and his wife.
Q. Eat in the house?
A. Yes, sir.
146 Q. Was the new house built then?
A. Not finished. It was in the old house we ate then.
Q. Anybody else board there at that time?
A. There was a mason there.
Q. Who was he?
A. I couldn't tell his name. He lived in Mill Creek somewhere. I knew his name then, but I couldn't tell it now. I know the man when I see him.
Q. You did the mason work with him?
A. He was a plasterer. I built the wall for the cellar.
Q. Was there anybody else during that time?
A. Olaf Nord worked there a few days, but he didn't board with Thiede.
Q. Any of them take meals there at noon?
A. The mason that done the plastering, he took meals.
Q. Anybody else?
A. Joseph Willaday and a man by the name of Henry Rhoder—a young man.
Q. Where are those gentlemen now?
A. Joseph Williday is in Chicago, but I can't tell exactly where.
Q. Where is Rhoder?
A. That I can't tell; I haven't seen him but once since.
Q. You say you worked from sometime in May?
A. Sometime in April.
Q. The first time?
A. In 1891.
Q. Worked from May till when?
A. Till sometime in April; I think it was three or four weeks I worked then.
Q. You commenced in May and quit in April?
A. I commenced in April and quit in May; that is it.
Q. About how many days were you there?
147 A. It was either three or four weeks; I couldn't say positively.
Q. How often did you hear him call her a whore or a slut that you can remember of distinctly?
A. Daily.
Q. Every day; you will swear to that, will you, positively?
A. Yes, sir; with a clear conscience.
Q. Were you around the house when they were together at any time except at meals?
A. I was between the house and the saloon levelling the garden and putting in plants.
Q. Who helped to do that?
A. Joseph Williday.
Q. Putting in plants?
A. Yes, sir.

Q. You mean vegetables and flowers and trees?

A. Flowers; and we seeded the lawn.

Q. Was Mr. Thiede and his wife present during any of those times?

A. Occasionally Mrs. Thiede came out and looked at our work.

Q. When did you go to work there again?

A. I worked for Mr. Thiede—I think it was the 7th or 8th of December, and then I commenced about the 18th; I am not just positive what the date was, but I think it was a week before Christmas I commenced to work. He wanted me to work for him all winter, and I stayed there until the latter part of January.

Q. During that time where did you sleep?

A. In the saloon, in one corner, and he in the other. Thiede slept under the lunch counter at the west end of the saloon, and I slept in the northeast corner in a cot.

Q. Did he have a cot to sleep on?

A. Yes, sir.

148 Q. That was where he usually slept?

A. Yes, sir.

Q. And his wife and little girl, where did they sleep?

A. In the house, as much as I know.

Q. Did you take your meals at the house during that period of time?

A. Yes, sir.

Q. About how long did you take your meals there—during all that time?

A. All that time.

Q. All your meals?

A. Yes, sir; three times a day.

Q. Did these difficulties occur at each meal, morning, noon, and evening?

A. As regular as the meals were.

Q. You had meals three times a day, did you?

A. Yes, sir.

Q. And that was always the trouble at meal time?

A. With the exception of about two times.

Q. Every other time there was trouble?

A. Yes, sir.

Q. Can you tell what was the occasion of the trouble each time; what the matter in dispute was about?

A. There was no dispute whatever. Mrs. Thiede never disputed.

Q. What was the subject of the quarrel; can you tell what the quarrel was about?

A. Anything that was brought up.

Q. Can you recall any one of the times, what the dispute was about?

A. Sometimes Mrs. Thiede would ask me how I liked this or that—commenced a conversation of that kind. Mr. Thiede would say, shut up.

Q. What would she say?

A. She would say, Charley, daresent I say a word once in a while?

Q. Was that the way they always come up?

A. Yes, sir.

Q. Every time?

A. Yes, sir.

149 Q. About when you would make some remark about whether you liked anything?

A. Mrs. Thiede always commenced the conversation, or would say something to me—Stryker how do you like this or that, or sometimes she would the weather and sometimes the little girl.

Q. Do you remember the subject that led up to the dispute?

A. It was table conversation.

Q. What was it about?

A. About what we were eating, or the weather, or the child going to school, or something of that kind.

Q. Was that true in 1891, the same subjects would lead to a dispute?

A. It was not, because the girl was not going to school then; in 1891 it was more their family affairs.

Q. You say you spoke to him Christmas and New Years last; what did you say to him?

A. He said, in the morning, this is the holy Christmas day. Yes, said I, Charley, and let us eat our Christmas dinner in peace to-day, too.

Q. What did he say?

A. He said, I will try to.

Q. That was to be a peaceable meal, was it?

A. Yes, sir.

Q. That was the only one up to that time you ever ate there?

A. Yes, sir.

Q. What was said New Year's day?

A. The same thing. We ate New Year's dinner in peace.

Q. Ever say anything to him any other time; ask him to eat in peace?

A. When he asked me to go and build his stable and fix his ice house I said, if there is as much quarreling going on in your house as there has been I can't work there. He said, Chris, it is altogether different now; we don't quarrel any more.

150 Q. When was that?

A. When he asked me to go work for him; in the fore part of December, 1893.

Q. You say you ground his knives for him?

A. Yes, sir.

Q. That was when?

A. After New Year's; I can't tell just what date.

Q. Didn't his wife give you the table knives to grind?

A. He brought the table knives into the saloon and laid them on the table, and I took them and brought them back to his wife.

Q. You brought them back to his wife?

A. Yes, sir.

Q. Had you ever seen those knives before?

A. I have used some of them at the table to eat with.

Q. All the knives you ground you had seen them around there?

A. Yes, sir.

Q. Such knives as were used in the saloon, and at the house, and in his business?

A. Yes, sir.

Q. You had seen them before?

A. Yes, sir.

Q. And saw them afterwards and knew that they were there?

A. Yes, sir.

Q. And saw him use some of them?
A. He used some of them to cut bread once in a while for lunch.
Q. You would see the knives being in use right along?
A. Yes.
Q. How often were you in the saloon during the time you worked there?
A. Every evening.
Q. In the daytime ever?
A. Sometimes. It was seldom I didn't get in at noon.
Q. When you were there you slept in that room, didn't you?
A. Yes, sir.
151 Q. You felt at home there?
A. Yes, sir.
Q. And you would get up in the morning and see what was there, and what was going on, and observed what was there, didn't you?
A. I slept the saloon in the morning.
Q. Cleaned it all up and swept behind the bar?
A. I only cleaned the bar twice; he generally done that when it was done.
Q. All that time you would see the different articles that were used behind the bar and on the bar, and what was on the lunch counter and on the tables; you had an opportunity of seeing all that?
A. I saw the knives, all but the one he laid aside for his own purpose.
Q. You never saw that?
A. Not until I saw it in the hands of the sheriff afterwards.
Q. That was the knife, was it?
A. That was the knife.
Q. Is that 12 or 14 inches long?
A. That was the bread knife; that was the butcher knife.
Q. The knife the sheriff has?
A. Yes, sir.
Q. You have seen it in the sheriff's hands?
A. At the time he had his hearing.
Q. At the time of the coroner's inquest, or the preliminary hearing?
A. At the time of the hearing.
Q. That is the same knife, is it?
A. I sharpened that knife.
Q. That is the knife you speak of as being the special knife?
A. The one he laid aside.
Q. The bread knife is the long knife?
A. The bread knife is the one I described the length of.
Q. The other knife was not so long?
A. Not quite so long.
152 Q. When was that he asked you about the Irvine divorce case?
A. It was at the time of the trial.
Q. When was it?
A. In December; it was between Christmas and New Years in 1893 and 1894.
Q. That was the time the Irvine divorce trial was going on—during the time of that conversation?
A. Yes, sir.

Q. What did he say to you about divorce; how did it come up? Give the conversation, all of it. I want to know all that was said.

A. Between Thiede and myself?

Q. That is what I asked for.

A. He would read the Tribune or the Herald; he would take one and I the other, and we would compare the two to see whether they were alike, and we would talk matters over.

Q. You talked about the divorce case?

A. He would say once in a while, Don't you think I could get a divorce from my wife?

Q. What did you say to him?

A. I would tell him no; said I, your wife might get one, but you couldn't.

Q. What did he say?

A. He said, Why not? He said, I daresent sleep with her; I have to sleep in the saloon and she sleeps in the house.

Q. Is that all he said about the divorce? Tell it all.

A. I couldn't repeat every word we talked about.

Q. Repeat all you can remember.

A. Once in a while he would ask me if I didn't think Judge Powers could save a man's neck in a murder case if he had money enough.

Q. What did you tell him?

A. I told him I didn't know but what he could, if there was money enough there.

153 Q. Judge Powers was one of the attorneys in the Irvine divorce case, was he?

A. Yes, sir.

Q. And in discussing the merits of that case his name frequently appeared in the papers and he became the subject of conversation as attorney, did he not—his ability?

A. Yes, sir; certainly.

Q. By that means you talked about his ability as an attorney generally?

A. Yes, sir.

Q. You spoke about him having a number of criminal cases in this court?

A. Not about criminal cases in this court.

Q. At other places?

A. Yes, sir; Montgomery——

Q. Wasn't this remark made, that Judge Powers, if there was money enough in it, could clear most any man?

A. Yes, sir.

Q. That was about the way the remark came up, wasn't it?

A. It came through the questions Thiede asked me.

Q. The general discussion of Powers in connection with that case; he was regarded as a brilliant lawyer and had been successful in acquitting several men in murder cases and could do so if he was paid for it, and would do it?

A. Yes, sir.

Q. That is why the conversation arose?

A. That was not what brought the conversation between us.

Q. Wasn't it brought up by reading the papers, and didn't it occur at that time?

A. That was not the topic—the question between us two.

Q. At the time the remark you spoke of was made, wasn't it made at the time you were reading the papers?

A. It was made at the time we were reading the papers.

154 Q. And while you were discussing the merits of the attorneys, and right along in the conversation following?

A. The topic of the question between us—Power's name being brought in there—was how Thiede could get rid of his wife. That is why Power's name was drawn in between us two.

Q. I will ask you if it is not true that came up while you were discussing the Irvine divorce case; if it wasn't on that occasion; wasn't it an evening when you would be reading the papers it would come up, following that at the same time?

A. At the same time we were reading the papers.

Q. The same evening while you were sitting reading?

A. Yes.

Q. You would read in the saloon at night?

A. Yes, sir.

Q. The time you did your talking?

A. Yes, sir.

Q. Was there anybody present at any time at any of these conversations?

A. No, sir.

Q. No one present; no one came in the saloon?

A. If any customers came in the saloon the papers were laid aside.

Q. And the conversation dropped?

A. Ended.

Q. Customers would come in at times?

A. Yes, sir; and that would end our conversation, because the conversations between us at that time was confidential.

Q. What was that he said about his wife flirting with other men?

A. He said his wife was too honest and good a woman for him; he never said anything about her flirting; he said he had to have a wife that would do it.

Q. When was that said?

A. Sometime in January, 1894.

Q. About a week after New Year's, did you say?

A. About the time the Irvine trial was in progress.

155 Q. How long did you stay there after that?

A. I stayed till the latter part of January. I stayed till I got scared, and then I left.

Q. How long have you lived in Utah?

A. It was four years yesterday I landed in Salt Lake City.

Q. Have you been living here ever since?

A. In Salt Lake County ever since.

Q. You say your home is Illinois?

A. Yes, sir.

Q. What has been your business since you have been in Utah?

A. I have worked for three different road supervisors, for the county, for ranchmen; I have tended bar five months in the city here.

Q. How many places?

A. One place.

Q. Been a bartended for five months?

A. Yes, sir; I say that to my own shame.

Q. Very likely. Anything else?

A. No, sir.

Q. That is the only business you have ever done?

A. I have done work here and there for ranchmen; trimmed trees and worked on the ranch, and worked for dairymen.

Q. Did you keep a bootblack stand in this town?

A. Yes, sir; I did. There was nothing else to do, and I had to have something to do.

Q. What are you doing now?

A. I am selling fruit and potatoes and vegetables.

Q. Are you a married man?

A. Yes, sir.

Q. Where is your wife?

A. In Wheeling, Cook Co., Ill.

Q. Any children?

A. Yes, sir.

156 Q. Who supports them while you are out here?

A. My business supports them.

Q. Did you send them money?

A. A little money since I am in Utah?

Q. Have you sent them any money in the last two years?

A. Yes.

Q. How much?

A. I don't think it is necessary for me to answer that.

Q. You don't want to tell that; all right. What was your business in Illinois?

A. I had a small store there; I was out with the wagon when my health allowed it—butcher business.

Q. You had a small store?

A. Yes, sir.

Q. Anything else?

A. Butcher business.

Q. Anything else?

A. No, sir.

Q. Were you never a preacher?

A. Not that I know of.

Q. Were you?

A. No, sir.

Q. How did you come to leave Illinois?

A. Medical advice.

Q. Isn't it a fact you are a fugitive from justice at this time?

A. No, sir; it is not.

Q. Isn't it a fact you left Illinois hurriedly? Do you know F. E. Ebinger?

A. No, sir; I have a brother-in-law by the name of Chris Ebinger.

Q. Didn't you leave Illinois suddenly?
A. I left Illinois just as fast as the train took me.
Q. Isn't it a fact that there was a warrant out for your arrest when you left?
A. No, sir; that is a malicious lie.
Q. You never heard of it?
A. No, sir.
Q. I will ask you if you have never been in the Cook County jail?
A. Yes, sir; I was.
157 Q. How did you get out; did you break out?
A. They told me to go home.
Q. And you came to Utah, did you, right after that?
A. No, sir; that was in 1880. It was on account of a trial similar to this one.
Q. You have not been back to your wife and children since you came out to Utah, have you?
A. No, sir; but I can show you——
Q. I will ask you if you and Thiede didn't have some trouble?
A. We did have in 1891.
Q. I will ask you if you didn't have him arrested at one time?
A. I did in 1891.
Q. For slapping you?
A. Yes, sir.
Q. And tried to have him arrested before Commissioner Greenman?
A. Yes, sir.
Q. I will ask you if you haven't brought a suit against him as soon as this matter happened to collect some account?
A. I collected my wages.
Q. Didn't you bring a suit?
A. Yes, sir.
Q. Attached some of his property down there?
A. I didn't.
Q. Your attorneys did, and you came in as one of the attaching creditors.
A. Moyer collected my wages for me.
Q. Didn't you do it through an attachment?
A. Not I.
Q. Wasn't your claim collected through an attachment suit out of the proceeds of the property sold under an attachment of Thiede's saloon within 22 or 23 days after the homocide?
A. My name wasn't mentioned in the attachment.
Q. Your claim was, wasn't it?
A. That I couldn't say.
Q. You don't know that?
A. No, sir.
158 Q. Who was your attorney?
A. Moyer.
Q. Did you ever make any affidavit in that case?
A. I did.
Q. Wasn't it an attachment affidavit?
A. I made affidavit to my claim.

Q. And didn't you make affidavit of attachment? I will ask you if you asked Mr. Thiede for a settlement before you brought that suit.

A. Yes, sir.

Q. After the happening of the homocide, did you ever ask him for it?

A. Yes, sir; McQueen took me to his cell and I asked him right there for my wages.

Q. Was that before you brought your suit?

A. Yes, sir.

Q. Wasn't that before he was arrested?

A. No, sir.

Q. Did you make any claim to him before he was arrested?

A. No, sir.

Q. Did you make any claim to him before he was arrested?

A. Yes, sir; I left him on good terms; said I, "I can't stand it any more here, it makes me sick."

Q. Did you present a bill to him before he was arrested?

A. I presented my bill before I left the house—when I got my clothes.

Q. Haven't you told a number of people around town, speaking of the defendant, that you were going to hang the son-of-a-bitch by your evidence?

(Objection.)

The COURT. Lay the foundation for your question.

Q. In the presence of several parties, in the saloon where you were working—I can not give the exact date, it is impossible, because I
159 can't fix the minute or day—but in this city, in the saloon where you were working, in the presence of several persons, if you didn't say that from my "evidence I will hang the son-of-a-bitch?"

(Objection as incompetent, as it does not specify who the persons were.)

The COURT. Counsel understands the rule. Specify the persons.

Judge CHERRY. I am unable, at this time, to give their names.

Q. Do you know Mrs. Koenan?

A. Yes, sir.

Q. Did you ever talk to Mrs. Koenan about this case?

A. It might be that I did.

Q. Did you say to her within a month, within six weeks past, that by your evidence you would hang Mr. Thiede?

A. No, sir; not to that effect; I might have made a remark that he ought to be hung.

Q. Didn't you tell her it was by your evidence—you expected to be an important witness?

A. My evidence wasn't mentioned in the transaction—in the conversation.

Q. Do you know a man named Johnson, who is now a barber?

A. A bootblack; yes, I know him.

Q. Did you ever talk with him about this case?

A. I think we have talked about it.

Q. In the last six weeks?

A. Not in the last six weeks.

Q. Two months?

A. It might be since the Fourth of July.

Q. Since the homocide took place?

A. Yes; that might be.

Q. I will ask you if, in talking with him, you didn't tell him you were an important witness, and by your evidence he would be hung.

The COURT. Where did this occur?

160 Judge CHERRY. In Salt Lake City, and I fixed the time within two months, or about that time.

Judge HOWAT. That is not definite enough.

The COURT. The witness's attention ought to be called to the time and place, so as to enable him to answer intelligently.

Judge CHERRY. I gave the time about two months ago or a little over.

Q. And didn't you say to him that your evidence would hang the defendant?

A. No, sir.

Q. You deny that, do you?

A. I don't remember that that question was ever brought up between us about hanging him on my evidence.

Q. Didn't you also at the same time tell him that you sharpened the knife that did the deed?

A. I think I have said that.

Q. Didn't you tell him on the same occasion that your evidence would be the strongest evidence given, and would hang the defendant?

A. I don't remember of any conversation to the effect that mine would be the strongest.

Q. Didn't you say that your evidence would hang the defendant?

A. No, sir.

Q. You didn't say that?

A. I don't think I ever made that remark. I might have made the remark, he ought to be hung.

Q. I will ask you if you didn't say that if his attorneys succeeded in acquitting the defendant they ought to be tarred and feathered and rode out of town on a rail?

A. I don't remember anything of that kind.

161 Q. You might have said it, though?

A. Not that I remember. Tar and feathers and rail has never been mentioned in my presence.

Q. I will ask you if you didn't tell Mr. Thiede, while you were working for him at his place, that you had trouble in Cook County and they had you in jail in a case similar to this.

A. I was a witness in a case similar to this between father and sons. Yes; we had a conversation about something of that kind. It was in 1880.

Q. Didn't you tell him that they were going to hang you and had a rope around your neck, and your brother-in-law interceded for you and got you away, or anything of that in substance?

A. No, sir.

Q. Isn't it a fact that you were arrested at one time there for mistreating your wife while you were in Cook County?

A. Not that I know of.

Q. If anything of that kind happened, you have forgotten it. Didn't you tell Charley Thiede that?

A. Not that I know of.

Q. And didn't you tell Charley Thiede you escaped from the sheriff of Cook County and run away?

A. No, sir; that is something I never done.

Q. And that you hid in the brush for eight days?

A. No, sir; I never had to do that. No, sir; wheaever the sheriff wanted me I was there.

Q. Are you a drinking man?

A. I drink tea and coffee.

Q. Do you drink liquors?

A. I think I have taken two drinks of liquor since I left Charles Thiede's.

162 Q. Did you drink when you were down there?

A. I drank three drinks, I think, of liquor.

Q. Did you drink beer?

A. Sometimes I drank one glass of beer a day; sometimes three; sometimes none.

Q. Are you in the habit of drinking beer?

A. No, sir; I am not in the habit of drinking beer. I took one glass of beer with the boys last week while I had to sit around here.

Redirect examination by Judge HOWAT:

Q. He asked you if you had been in jail; when were you in jail?

A. I had a fuss with an old man——

Q. How long were you in jail?

A. From Saturday afternoon till Monday morning, till the court was in session. I was locked up as a prisoner. I was in the debtor's room.

Q. Was it when you were in attendance as a witness in a case?

A. No; it was on account of a difficulty——

Q. You say your business supported your family?

A. I have a store.

Q. Where?

A. In Wheeling, Ill.

Q. You left that with your wife and family?

A. Yes, sir; my oldest son is running the business.

Q. You say you came here——

A. The doctor advised me to come here. I was an invalid for six years. It was bad health brought me here.

Q. When you said your business supported your family you meant you left your store with your wife and family?

A. Everything, and my family expected they would have to send me money to live on out here, but I had the luck to make my own living.

163 Q. In regard to bringing this suit, was it for wages due from Charles Thiede to you on last December and January?

A. Yes.

(Objection as immaterial.)

The COURT. He may answer that question.

Q. Was there any dispute about any litigation growing out of it, or did you just bring your suit and get your money?

A. I brought my suit and it was not contested, and I got my money. If the court would like——

The COURT. Answer the questions that are asked you.

Q. You say you never were arrested on a criminal charge?

A. No, sir; I never was arrested on a criminal charge; the court records will show that.

Q. In talking about this Irvine divorce case you say you talked about the murder case of Judge Powers; what case was talked about, if any?

A. The Irvine case and the Montgomery murder case.

Q. Who was it was said between you had been cleared in that case for killing someone?

A. Irvine.

Q. That was how it came up?

A. That is how the conversation came up.

Q. As to whether Judge Powers could clear anybody who committed murder?

A. Yes, sir.

Cross-examination by Judge CHERRY:

Q. The suit you brought for the money was while Charles Thiede was in jail?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. When were you first subpœn'ed as a witness in this case?

164 A. I was subpœn'ed the very same day Charles Thiede's hearing commenced.

Q. I mean here in this court.

A. Wednesday.

Q. I will ask you to state whether you ever had any conversation with me until Wednesday evening.

A. I had not.

Judge CHERRY. I don't see that that is material in any way whatever in this case.

Judge HOWAT. The insinuation is made that this witness is a swift witness who has been trying to convict this defendant, and I want to show he never came near the prosecution till he was subpœn'ed and came to my office at my request.

The COURT. He may answer.

(Exception.)

Q. When did you first talk to any attorney connected with the prosecution on any topic connected with this case?

(Objection as incompetent, immaterial, and irrelevant.)

The COURT. It is admissible on the evidence that has been brought out.

(Exception.)

A. Wednesday evening.

Q. To whom did you do the talking?

A. Yourself.

(Objection. Objection overruled. Exception.)

Q. Where?

A. In your office, by request.

Q. You were requested to come there?

A. Yes, sir.

Cross-examination by Judge CHERRY:

Q. You say you were subpœn'ed to attend the trial on his preliminary hearing?

A. Yes, sir; but I was not put on the stand.

Q. Did you at that time have any conversation with anybody about the case?

165 A. Whoever knew my name or heard it and knew I worked there would ask me questions.

Q. Did you talk to them?

A. I did at some times; sometimes I cut them short; other times I didn't.

Q. At the time you were subpœn'ed did you talk with any officers or attorneys about the case?

A. When I was subpœn'ed last week?

Q. No; the first time; when it first came up?

A. I might have talked with Sheriff Steele, because I was acquainted with him, or Montgomery.

Q. Did you ever talk with Dennis Eichnor or Walter Murphy?

A. Yes, sir; I talked with Murphy.

Q. About your evidence?

A. No, sir.

Q. About what you knew about the case?

A. It was Mr. Eichnor I talked with.

Q. You told him about your case?

A. Not mine, but on account of the little girl's testimony put in there.

Q. Did you tell him anything you knew about this case?

A. The county attorney?

Q. Yes, sir.

A. I shouldn't wonder but what I did.

Q. You told them substantially what you knew?

A. I told them I worked there.

Q. Did you tell them substantially what you have testified to to-day?

A. No, sir; I don't think so.

Q. Any part of it?

A. There might have been a part of it.

Redirect examination by Judge HOWAT:

Q. Were you present at that examination?

A. Yes, sir.

166 Q. State whether or not it is true a great many of the witnesses subpœn'ed there were not called as witnesses at all.

A. Only four or five called.

Judge CHERRY. The record would show that.

The COURT. He cannot state anything except what he knows of his own knowledge.

167 Dr. BENEDICT, recalled for further cross-examination by Judge Cherry.

Q. I will ask you if, when you made an examination of the body of the deceased, you made any examination to determine whether she had been raped or outraged?

A. Not any.

Q. Or to determine whether she had sexual intercourse recently before the killing?

A. No, sir; I didn't make any examination of that kind.

Q. I will ask you if it is not a fact that having a given time when a person partakes of food, that by an analysis and examination of the contents of the stomach you cannot determine the length of time, or very close to the length of time, death ensued after partaking of the food, where there is a sudden death?

A. Yes, sir; you could make a fair estimate of it.

Q. Was any examination of that kind made by you, or in your presence?

A. No, sir; not that I know of.

Q. Had it been made before you examined the body?

A. There was no incission at all.

Q. When you saw it there had been no such examination made?

A. Not at all.

Q. In regard to the cooling of the body, I would like to know what is the usual time for a body to cool after death?

A. That would depend a good deal on the surrounding circumstances; you mean to be perfectly cold?

Q. Yes, sir; until all the external parts would be cold, the surface of the body. Of a person having clothing on.

168 A. Excepting the abdomen and chest, they would require six or eight, perhaps ten, hours, depending entirely upon the temperature surrounding the body; the extremities, say, for instance, the finger ends or the toes, would get cold very readily.

Q. Now, I will ask you if there would be an' difference in a person dying suddenly and one who died from some wasting disease or from natural causes?

A. Yes, sir.

Q. Isn't it true that persons frequently in dying from a disease their extremities are cold before they are dead?

A. Yes, sir; long before.

Q. A person dying in full health their body would not cool as rapidly as one who died in the manner I have just spoken of; lingering and getting cool before they die?

A. I should think not.

Q. I would ask you how soon cadaver 'igidity or rigor mortis sets in after death?

A. That would depend upon the temperature and external conditions; anywhere, you mean, commencing rigor?

Q. Yes, sir.

A. Certain stiffness of the extremities; well, it is a matter of estimation; perhaps an hour or two it would be established.

Q. What?

A. It would be established. It is probable that rigor mortis begins immediately.

Q. Perceptibly?

A. In an hour or two, perhaps less.

Q. It does not commence until after the body cools, does it?

A. The body is perceptibly cooling at the time. No, we have
169 the coldness, but my opinion would be that after death that peculiar contraction of the muscular tissue begins immediately, but as I said, perceptibly to the outside portion it would be a matter of guess work as much as anything else, dependent upon external circumstances.

Q. I will ask you if you regard Austin Flint's Physiology as a standard authority on such matters?

A. Yes, sir.

Q. I will ask you to say if you are familiar with the estimate he gives of the time it usually occurs?

A. I cannot say that I am. I have read Flint, but not on that subject. Perhaps I have; I have never given the matter much attention.

Q. I would read——

Judge HOWAT. I object.

Q. I will pass this book to the witness and let him say whether that is Austin Flint's Physiology.

A. I suppose so; I think this is correct.

Q. Will you look at the bottom of that page; I think it commences.

A. Cadaver 'igidity, rigor mortis.

Q. Read it.

A. His first statement is about like mine; at a variable time after death—that is just as near as I could come to it—usually from five to seven hours, all the muscles of the body involuntary as well as voluntary, become rigid and can be stretched only by the application of considerable force. That is correct. That would be my experience and opinion. It would be as I have known it. Will you have some more [reading]? Sometimes, especially after long continued and exhausting diseases, this rigidity appears as soon as a quarter of an hour after death. That is cor-
170 rect. In the case of persons killed suddenly while in full health it may not be developed until 20 or 30 hours after death, and it then continues for six or seven days. That would depend entirely on whether the body had been moved or not, because when you once break up that rigor mortis no more rigor occurs; that settles the question. Its average duration is 24 to 36 hours; that is its duration.

Q. That is substantially your view, that that is a correct statement?

A. There is no question about that at all; it is of variable duration.

Q. Are you familiar with John B. Beck, who published a book on the elements or medical jurisprudence?

A. Yes, sir.

Q. I will ask you to state where that rigidity first makes its appearance usually.

A. Usually I should think in the flexor muscles of the extremities; what we mean by extremities would be the arms and legs.

Q. I will ask you if it is not a fact that it usually appears in the muscles of the arms first before it does in the lower limbs.

A. I should think so, because they are smaller and would cool down more rapidly.

Q. Doesn't it usually appear first in the muscles of the inferior maxillary or lower jaw?

A. You mean to close the jaw; close the mouth, I mean?

Q. The rigidity first appears in the muscles that move the lower jaw?

A. I think that is correct. Yes; I think there is no question about that. That is correct. That is, if it were noticed carefully and
171 accurately probably you would find the lower jaw fixed if you attempted to pull it down; perhaps as soon as you would find it in the fingers or hands.

Q. I will ask you if from there it does not attack the upper muscles, all of the upper muscles, before it does the lower extremities?

A. I should look for it in the hands and arms first.

Q. For what reason?

A. Because they are smaller.

Q. Is that the only reason?

A. They cool down more rapidly and are more subject to changes of temperature; that is, external impressions. I don't know of any nervous reason connecting the cerebrum with the parts. I don't think that would have anything to do with it. It seems to be an anatomical change, if I could illustrate it, affecting the flexor muscles of the body.

Q. Do you know of any scientific reason for it?

A. No, sir; I do not.

Q. I mean is it one of those things that occurs without any particular reason?

A. It is one of those matters we find by examining bodies. It is simply cumulative testimony under circumstances. The rule is that any body that has not been disturbed after a given length of time is found more or less rigid dependent upon external conditions, clothing and others.

Q. Is that condition true of a body that has died from hemorrhage the same as other causes?

A. I should think that a body where death occurred from hemorrhage would be longer in showing the rigor mortis than one that had died with the blood left in the body.

172 Q. Is the rigidity due to any coagulation of the blood?

A. No, sir.

Q. Is it simply a matter that acts on the muscular tissue?

A. Muscular fibre.

Q. It effects animals slaughtered the same as animals not slaughtered?

A. As far as my experience goes it certainly would be the same. I think it is the same.

Q. You stated in your examination that the person who committed this act, that cut the deceased's throat, could not haved one that without getting blood on his hands and arms—that is in front of the throat, presuming it to be done in the manner you describe, for the reason that the arteries and blood vessels were all severed and the blood would spurt some distance. That was substantially your statement, wasn't it?

A. Yes, sir.

Q. I want to ask you if the blood would fly in different directions, those vessels being cut in the manner you describe—whether the blood would spurt in more than one direction? *Q.* From the different vessels?

A. That would depend upon the condition and character of the blood vessels. The blood vessels like a hose, each one would throw a stream in a given direction as where pointed. If I can illustrate, say one here like a hose would throw a straight stream. If a branch were cut off that one at right angles it would throw a stream in this direction. Of course that is the arteries; as to the veins there is no force in them; they would simply——

Q. Run out?

A. That's it exactly.

Q. You examined this cut and saw the manner in which the arteries were severed and cut?

A. Yes, sir.

173 Q. You looked at this carefully?

A. Yes, sir.

Q. Turned them over and looked at them?

A. Yes, sir.

Q. Would you say from the nature of the injury that the blood would flow in different directions from this particular case if the woman was standing up as you have probably described, and the blow was inflicted as you have described, would those blood vessels throw the blood in different directions, is it probable?

A. Yes, sir; it would make a spray almost.

Q. I will ask you whether or not there would be any difference in the blood stains on the clothing of a person that was received from blood flowing as you have mentioned from the fresh wounds the arteries of the neck, would there be any difference in those stains and those received from touching the dead body or handling the dead body where the blood had been coagulated?

(Objection. Objection overruled.)

A. Yes, sir; there would be a decided difference.

Q. I will ask you if it is not a fact that while the blood would come with some force from the wounds and while it was in a state of fluid, it would not be more readily absorbed by the clothing of a person than if they were stained by handling of a person whose clothing was saturated with coagulated blood?

A. Including its fluidity and the force with which it would strike, it undoubtedly would penetrate deeper into clothing; a good deal would depend upon the character of the clothing.

Q. We will say a white muslin shirt?

A. That is about as permeable as most anything.

174 Q. It would penetrate that as readily as anything you know of?

A. Yes, sir.

Q. Or a white summer vest, the same rule would apply?

A. Unless it were a starched vest.

Q. You testified about seeing some bruises on the body of the deceased. I want to ask you if it is not a very common thing to see livid spots on the body of the cadaver after 24 or 36 hours from death?

A. Yes, sir.

Q. Called post-mortem——

A. Post-mortem changes.

Q. I will ask you if it is not a fact, according to all the medical authorities and writers on the subject of contusions received both before and after death, if they are not often mistaken for bruises—wounds received before death?

A. It is true at times they are.

Q. I will ask you if the correct test to determine whether they are post-mortem changes or whether ante-mortem or whether——

A. I was speaking of ante-mortem and post-mortem conditions.

Q. I will ask you if the correct test as admitted by all the medical writers that you are familiar with and by your own experience to deter-

mine the difference between a contusion or bruise received before death and one of these livid spots or post-mortem changes which occur after death, is not to cut or raise the skin over those spots and to see and determine whether or not there is any discoloration or congestion of the blood in the capilary tissues extending into the subcutaneous parts?

A. Yes; that is the correct test.

Q. Did you make that test in this case?

A. No, sir.

175 Q. You simply looked at that from an external point of view?

A. Just simply looked at the body.

Q. I will ask you if those livid spots do not appear more generally on the back and loins?

A. Yes, sir; back—I wouldn't say that. I would qualify that by saying——

Q. Those livid spots of various sizes, do they not appear on the dependent parts, as the back and loins, and occur also on the neck, head, and genitives?

A. That is what I was going to say; dependent entirely upon the position of the body; the dependent portions are the ones that become discolored first, as a rule, with perhaps very few exceptions.

Q. The blood of a dead person obeys the physical law, does it?

A. Necessarily the law of gravitation.

Q. And a person by having their position changed afterwards those spots will change afterwards, will they?

A. Not after death. A post-mortem appearance that occurs at those times, if you roll the body as much as you like——

Q. Let it lay any length of time?

A. They would get another extravisation, but not lose the first.

Q. Would it diminish the other?

A. No, sir; I think not, because it is a natural soakage into the tissues that remains there. There is nothing in the world to change it.

Q. You say Beck's Medical Jurisprudence is an accepted standard?

A. Yes, sir.

Q. Will you please, commencing there, tell what he says on the subject of the changes made?

A. The livid appearance——

176 Q. Just read that to yourself.

A. The blood obeys physical laws in the dead body in the most dependent situations, as the back of the body and posterior portion of the lungs—that is, supposing, of course, that the patient is lying on his back. So well is this established that if the body be reversed—that is why I made that remark—and placed with its face downward, the lividity will change places and occupy the front part of the body. Dr. Beatty, indeed, states that he has seen the lividity already formed on the back to disappear when the body was turned before it became cold. That would be correct, too.

Q. Lividity does not always occur in all cases of death, does it?

A. I should say yes.

Q. Within 24 or 36 hours?

A. Yes, sir; I don't think you could find a corpse 36 hours after death lying on its back that hadn't a lividity along the back and buttocks. I

must confess I never saw one—that is, unless it has been embalmed, or something of that kind.

Q. In order that the jury may understand the meaning of the word "lividity," it refers to a dark, yellowish blue color?

A. It is a purplish color; it is not a bruise color.

Q. And that the jury may understand rigor mortis; it means in common language a stiffening?

A. Stiffening; that is, if you attempted to take up the arm you have got to break up the rigor mortis.

Q. It is what you commonly call getting stiff?

A. That is exactly what I mean.

177 Redirect examination by Judge HOWAT:

Q. Can you say, taking into consideration this woman was killed in the manner she was, how long it would be before she became cold?

A. As I said, that would depend upon the external circumstances.

Q. You say she was a slight woman?

A. Yes; perhaps 100 pounds or a little more.

Q. Then she was quite small?

A. Yes, sir; as to the time, the coldness begins at the extremities; the last portions to get cold are the chest and abdomen.

Q. I think you stated the other day that if there was a depletion of blood, as there was in this case, the body would commence to get cold sooner?

A. Much more rapidly.

Q. Speaking about whether the hand and arm would get bloody, would that depend upon the instrument which was used, the length of it, how far it was removed from the instrument that inflicted the wound?

A. No, sir.

Q. Suppose the instrument was a long knife, and he held it 8 or 10 inches from the place and inflicted the injury, would his hand be as bloody as if he had his hand up to the wound?

A. Certainly not.

Q. You say it would depend upon the instrument with which this injury was inflicted?

A. Largely, of course.

Q. And would depend upon the distance the hand was from the injury when it was inflicting it with the knife or other sharp instrument?

A. Yes, sir; if I might be allowed to explain, we will suppose a case.

Judge CHERRY. This is not redirect examination.

178 Q. You saw this wound?

A. Yes, sir.

Q. Will you say it was inflicted with a small or a large knife, if it was a knife?

A. As a matter of opinion, I should say it was a knife of 6, 8, or 10 inches—something like that.

Q. Would, in your judgment, an ordinary pocketknife have inflicted this wound?

A. It would not do it.

Q. Can you state when rigor mortis set in in this case?

A. No, sir.

Q. Now, in reading from Flint, he says it occurs in 5 to 7 hours; that is complete rigor, is it?

A. That is what is meant.

Q. From the time death ensues until there is complete rigor there is a gradual tendency that way?

A. Certainly; that is as I explained.

Q. Until it is complete?

A. Until it is complete.

Q. And if it is interfered with it does not ensue again?

A. Any movement of the body will limber it up.

Q. That will never occur again?

A. That rigor mortis seems to be——

Judge CHERRY. Don't make any voluntary statements.

A. I was simply going to explain the character of the rigor mortis, so that it might be understood properly.

Q. What was the appearance of this body as to whether in life she had been a rugged and strong or delicate woman?

A. I would have to describe it.

Q. I want to know whether the appearance indicated anything?

A. As to whether diseased or not?

179 Q. No, sir; as to whether she was naturally a delicate woman or a strong and robust woman.

A. She was a delicate, small woman, as I intimated. I averaged her weight at about 100 or 105 pounds. I may be mistaken in that; that is like judging on beef. I don't know, but I think that was about her weight. She was short and slender.

Cross-examination by Judge CHERRY:

Q. You were not acquainted with the deceased before her death?

A. Not at all, that I know of.

Q. You don't know whether she had any disease?

A. No, sir.

Q. You could only determine she was a person of small physique?

A. As I saw her, that is exactly what I mean.

Q. That is all you mean when you say she was delicate?

A. Yes, sir.

Q. You don't mean she was weakly or sickly?

A. No, sir.

Q. You don't pretend to say that you can tell from the description of the wound the length of the knife, do you?

A. No, sir; I don't. I was only guessing at it from the chain of circumstances.

Q. It might have been done with a knife 16 in. long down to a blade only 6 in. long, might it not?

A. Yes, sir.

Q. There is nothing in the character of the wound to show the length of the blade of the knife that did the cutting?

A. Excepting that it was longer than a pocketknife.

Q. It might have been something like a razor blade?

A. Yes; it could have been a razor.

Redirect examination by Judge HOWAT:

180 Q. You say it could not be a pocketknife—why?

A. It could not make that wound; it certainly could not make the two cuts that were there.

Recross-examination:

Q. Unless an exceedingly sharp pocketknife and a long blade?

A. Very long.

Q. An ordinary pocketknife, one whose blade would be from four to five inches long and very sharp?

A. I don't think it would make that cut; it must have been longer than that. That is, I am judging only from appearances.

Q. That is just your opinion?

A. That is all.

Q. You don't pretend to give that only as an impression or opinion?

A. Only an opinion from my examination of that wound.

181 Mrs. MARY ANDERSON, a witness sworn for the prosecution, examined by Judge Howat, through Interpreter Steele, testified as follows:

A. H. Steele sworn as interpreter.

Mrs. Mary Anderson sworn through the interpreter.

Q. What is your name?

A. Mary Anderson.

Q. How old are you?

A. 50 years old.

Q. Where were you born?

A. In Sweden.

Q. Do you talk the English language well?

A. No, sir.

Q. Do you know Charles Thiede, the defendant?

A. Yes, sir; since he came to this country.

Q. How long ago is that?

A. Four years this summer.

Q. Do you know M'ry Thiede, his wife, in her lifetime?

A. Yes.

Q. Do you remember her being killed?

A. Yes, sir.

Q. Did you see her the Sunday evening before she was killed?

A. Yes, sir.

Q. Where did you see her?

A. By the bank.

Q. The bank of earth, does she mean?

A. On the main road, a little south of the bridge, alongside of the bank.

Q. How far from Thiede's saloon?

A. She can not say how far, but so far away from the saloon around the corner of the bank the saloon could be seen.

Q. What time of night was it?

A. 10 o'clock in the evening.

Q. What was Mrs. Thiede doing, if anything?

A. Doing nothing; standing erect.

Q. Did you have any conversation with her or not?

Judge CHERRY. We don't want her to tell anything said.

A. The witness spoke, and Mrs. Thiede waived her hand. That is all.

182 Q. Show to the jury what she did.

A. [Witness indicates.]

Q. State to the jury whether or not you have heard Mrs. Thiede scream or cry from the house or saloon.

(Objection as immaterial, incompetent, and irrelevant, and not being connected in any way with the defendant.)

The COURT. She may state.

(Exception.)

A. You mean the defendant's house?

Q. Yes.

A. Yes; several times.

Q. Where did the screams come from; from what place?

A. One time from her house and one time from the hill.

Q. Do you know whether Thiede was with her that time she was on the hill?

A. No; he was at the saloon.

Q. How far from the saloon was it where the screams came from?

A. She can not say the distance, but it was not far, because they were near enough to talk between the two, Mr. Thiede and Mrs. Thiede.

Q. Were Mrs. and Mr. Thiede talking to each other when she heard this scream from her on the hill?

A. Yes, sir.

Q. They were keeping up a conversation?

A. Yes, sir; they did.

Q. Did you ever see Mrs. Thiede with bruises on her face or not?

A. Yes; I have.

(Objection as incompetent, immaterial, and irrelevant.)

(Objection overruled. Exception.)

Q. When, and about how often?

A. I can not say as to the time, but last winter and several other times.

Cross-examination by Judge CHERRY:

Q. Can you talk German?

A. No, sir.

Q. Could Mrs. Thiede talk Swedish?

183 A. She said she couldn't talk exactly, but they could make motions and get along pretty well that way.

Q. Where were you going when you saw Mrs. Thiede Sunday evening?

A. I came from meeting, but I took a friend home, so that I was later than the rest of the church people.

Q. About what time was it she saw her?

A. 10 o'clock at night.

Q. Ask what Mrs. Thiede was doing when she first saw her.

A. Doing nothing; standing up.

Q. Ask if she had any clothing on her head.

A. No, sir.

Q. Did she have any cloak or shawl on?

A. No, sir.

Q. Ask if she spoke to Mrs. Thiede.
A. No, sir.
Ask if Mrs. Thiede spoke to her.
A. No, sir.
Q. Ask if she saw Charles Thiede anywhere around.
A. No, sir.
Q. Ask her which side of the road Mrs. Thiede was standing on.
A. The west side.
Q. Ask how often she waved her hand.
A. Twice.
(Judge Cherry asks that all this witness's testimony in reference to seeing Mrs. Thiede by the bank Sunday night be stricken out.)
The COURT. It is simply corroberation of the other testimony on the same point, and I think the objection should be overruled.
(Exception.)
Q. You say you heard her scream several times. When was the first time? Where was she screaming the first time?
A. It was Mrs. Thiede's house the first time.
Q. Ask what time in the day or night was it.
A. The witness can not say, but her folks had all gone to bed
184 and it waked her and she looked out of the window.
Q. Ask how she knows its was Mrs. Thiede.
A. She knew her voice.
Q. Could she tell her voice when in the nature of a scream from any other female voice?
A. She never heard any other woman scream but her, and she was so well acquainted with her voice.
Q. Ask her if she never has heard any other woman scream in her life.
A. Yes, she has; but not like hers.
Q. At the time she heard her scream on the hill, was that daytime or night?
A. That was in the evening.
Q. Was it dark?
A. Yes.
Q. How far does she live from the Thiede place?
A. Half a block, about.
Q. What direction?
A. West.
Q. Is it the first house on the hill she lives in?
A. Third house on the hill.
Q. Ask her if she could see Mrs. Thiede from that place.
A. She could when there were no leaves on the trees.
Q. Could she at the time she heard that scream?
A. Yes.
Q. At night?
A. Not at night time.
Q. Didn't she just say it was at night she heard that scream on the bank?
A. She didn't see her then, but heard her.
Q. She didn't see Mr. Thiede then, did she?

A. No, sir.

Q. Then, when she stated she saw them and they were conversing, she was mistaken?

(Objection, because the witness didn't state anything of that kind.)

185 (Question withdrawn.)

Q. Could you hear the conversation Mr. Thiede and Mrs. Thiede had with each other on that occasion?

A. I could if I could understand their language.

Q. Were you at your own house at the time you heard it?

A. I was on my way going that way, but when I heard the trouble I returned home around back.

Q. Whereabouts on the hill was Mrs. Thiede?

A. About the middle of the road.

Q. She was not on the hill then?

A. About the middle of the road. She was at the foot of the hill.

Q. Where, with reference to the brewery?

A. She cannot say. It was about 100 to 200 feet from the brewery; the distance she cannot say.

Q. Which way, which direction?

A. The road that goes on up——

Q. South?

A. On the road that leads to Mr. Burg's blue house.

Q. Ask if it is the road running up the hill south.

A. Yes.

Q. Ask her how she knew she was there if she didn't see her, and if she was away over on the west road coming from her house.

(Objection as not stating what the witness testified to.)

Q. How far from her house was she when she heard the scream?

A. She was half way between the last house and Thiede's saloon, that is, the house nearest Thiede's saloon, just half way, so that she was not far away from the spot.

186 Q. She didn't see Mr. or Mrs. Thiede?

A. Didn't see either one of them.

Q. Ask how she can tell where Mrs. Thiede was at the time she was screaming.

A. I heard her voice.

Q. She judges from that, does she?

A. Yes; the way I heard it I judge——

Q. How *far* has she lived in that neighborhood?

A. Four years.

Q. Lived there during the time the Thiede's lived there?

A. Yes, sir; we lived there before Mrs. Thiede came from Germany.

Q. Did she live there before she went to Germany?

A. No.

Q. Ask if she can remember when she saw her with the bruise on her face.

A. She didn't pay any attention to the time.

Q. Whereabouts on the face was the bruise?

A. Under the eye, a swelling up.

Q. Did she see that more than once?

A. I cannot say positively I did more than that time when the eye was swelling up.

Q. How often did she see Mrs. Thiede while she lived there?

A. When I went by I always saw her, and I could see her when she was out on the porch.

Q. Ask her how often she went by there during the time she lived there.

A. It differed; sometimes once a day, and sometimes days went by I didn't go by at all.

Q. Would she go by and see Mrs. Thiede as often as once a week?

A. Yes; it averaged once a day.

Q. Ask if she has told all the times she heard any screaming there.

A. Yes, sir.

187 GEORGE WRIGHT, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. What is your name?

A. George Wright.

Judge CHERRY. I object, for the reason his name has not been furnished to us until the trial commenced. Object to his being sworn and save our exception.

The COURT. Objection overruled.

(Exception.)

Q. Where do you live?

A. 10th ward, sir.

Q. Do you know Charles Thiede?

A. Yes, sir.

Q. How long have you known him?

A. For nine or ten years.

Q. Did you work for him at any time in his saloon down near Murray?

A. Yes, sir.

Q. When was that?

A. Three years ago this fall.

Q. State whether you ever heard the defendant use language to his wife out of the usual course of language.

A. (Objection as calling for a conclusion.)

The COURT. He may answer.

(Exception.)

Q. The question is whether you heard any language of that kind used by the defendant to his wife.

A. I heard Mr. Thiede abuse his wife one evening after being in Salt Lake.

The COURT. Let that be stricken out.

Q. The question is, Did you ever hear him use any language to his wife out of the usual course of conversation between man and woman?

A. Once.

Q. What did he say to her?

A. He called her a drunken vagabond.

188 Q. How long did you work for Mr. Thiede at that time?

A. As near as I can remember, very near onto a month at that time.

Q. During that time state whether at any time you heard Mrs. Thiede scream or saw her cry when coming from her house when Thiede was there in the house.

(Objection as immaterial, irrelevant, and incompetent, and not connecting the defendant in any way.)

(Objection overruled. Exception.)

A. I have seen Mrs. Thiede crying. She came out of the house and said that Charles——

Q. Never mind that; was Thiede inside of the house when Mrs. Thiede came out crying?

A. Yes, sir.

Q. State to the jury whether or not you ever saw him push her violently around.

A. Yes, sir, I have; out of the saloon.

(Objection as leading and suggestive.)

Q. Have you heard the defendant at any other time use language to his wife similar to what you have stated, or anything like that?

A. Mr. Thiede used to use a good deal of German language and I couldn't understand him, but I knew he was in an angry passion on several occasions.

Judge CHERRY. I ask that be stricken out.

The COURT. If you connect it it may stand.

Judge CHERRY. I want that part of it stricken out now.

The COURT. It may be stricken out.

Q. State to the jury whether you ever saw the defendant angry with his wife or not.

A. I answered that question once; yes, sir.

189 Q. How often?

A. On three or four different occasions.

Q. Did Thiede and his wife talk to each other in the German language?

A. Most all the time; but after he would abuse his wife he would talk in the English language sometimes and sometimes in German, and I couldn't understand only the English part of it.

Cross-examination by Judge CHERRY:

Q. When did you work there?

A. Three years ago this fall.

Q. How long did you work there?

A. As near as I can remember, about a month.

Q. What month was it?

A. I believe the latter part of October and early part of November.

Q. Three years ago?

A. Yes, sir; I think it was three years ago this fall. I know one thing, I helped him put up his winter's horse feed in the fall.

Q. Did you board with him during that time?

A. All the time I was working with him.

Q. Eat at his table with the family?

A. Sometimes I would eat at the saloon and sometimes at the brewery.

Q. Did you never eat with the family at the house?

A. Yes, sir.

Q. The most of the time you ate with the family?

A. No, sir; not most of the time.

Q. Did they have meals at the brewery?
A. Yes; we eat at the brewery and the saloon too. Thiede used to take many of his meals in the saloon and brewery.
190 Q. Were the meals brought from the house?
A. Yes, sir.
Q. Cooked and brought up?
A. Yes, sir.
Q. You have often eat at the table with the family, have you not?
A. On two or three different occasions only.
Q. During the whole month?
A. Yes, sir.
Q. Where did you sleep?
A. Upstairs in the brewery.
Q. Was the upstairs of the brewery fitted for sleeping?
A. Mr. Thiede furnished me bedclothes and I slept upstairs.
Q. It was kind of a sleeping apartment way up in the upper part?
A. Upstairs, in the large storeroom.
Q. You saw him push her out of the saloon on one occasion, did you?
A. Yes, sir.
Q. Where did she go when he pushed her out of the saloon?
A. Over home, across the street.
Q. This time you speak of was before the brick house was built?
A. It was then a dance hall.
Q. Was it before the brick house was built?
A. No, sir; because I did the grading around the brick house after it was finished and completed.
Q. Then it was still a dance hall, was it?
A. It was built for a dance hall and afterwards remodeled and changed into a residence.
Q. How do you know that?
A. Because I have seen the residence since.
Q. You know it was built for a dance hall?
A. Yes, sir.
Q. You know when it was built?
A. A year before I worked for Thiede.
191 Q. And when you were there it was used as a dance hall?
A. It was built for a dance hall and used for that purpose.
Q. You saw her come out of the house crying that day?
A. Yes, sir.
Q. You don't pretend to know what she was crying about, do you?
A. She said Mr. Thiede had been abusing her.
Q. Do you know that?
A. He was under the influence of liquor and had just come back from Salt Lake.
Q. Could you understand and know what she was crying about at that time?
A. She told me herself.
Q. You didn't see it?
A. No, sir; I was not in the house; I was over to the stables.
Q. And you heard him call her a drunken vagabond?

A. I did when he pushed her out of the saloon door; he called her that in the English language.

Q. That was the occasion?

A. No, sir; that was on a different occasion.

Q. That was the time he pushed her out of the saloon he called her that name?

A. Yes, sir.

Q. Do you know whether she had been drinking or not on that occasion?

A. I never saw Mrs. Thiede under the influence of liquor in my life.

Q. Will you answer the question?

A. She didn't have the appearance to be.

Q. Did you know whether she had been drinking any?

A. I couldn't swear to that.

192 Q. You didn't see her?

A. If she did she had it in the house, because she had the saloon locked up while he was in town.

Q. Didn't let her stay in the saloon?

A. No, sir.

Q. How did you come to quit working for Mr. Thiede?

A. (No answer.)

Q. Do you know?

A. Yes, sir.

Q. You quit suddenly, didn't you?

A. Yes, sir.

Q. Where did you go when you quit?

A. Came to Salt Lake City—came home.

Q. Where have you been in the last two or three months?

A. I have been on the sewer the month of July. I have been working for my father in Mt. Olivet Cemetery since then, off and on.

Q. Have you spent any of your time in the county jail?

A. Yes, sir; I helped build the county jail.

Q. This county?

A. Yes, sir.

Q. Have you spent any time in the last few months as an inmate of that institution?

A. Yes, sir.

Q. For what reason?

A. For playing a joke down here at Murray.

Q. What were you convicted for?

A. I was convicted of—by a joke——.

Q. (Interrupting.) You were convicted of larceny?

A. Yes, sir; petit larceny.

Q. For stealing property from Harry Haines' store, or some store in Murray?

A. No, sir; we didn't steal it.

Q. You were convicted for that?

193 A. We took it joking, and I was the one that returned it in the morning.

Q. Were you convicted of larceny and sent to the county jail?

(Objection as incompetent and immaterial.)

A. Yes, sir.

Q. For how long a term?

A. 18 days.

Q. Do you want to make any explanation?

A. Certainly; I want to make an explanation before the public that there were three of us down there, and we had been drinking a little, and we were waiting then for the smelter to start up. This was on Friday, and I was to go to work there Monday morning—that is, if there was any possible show. I was staying around there with the understanding of getting a job, and we played this joke on one of the parties down there and packed this bucket of candy away, and then I packed it back again and tried to explain the joke, and he gave me over to the sheriff, and he had me sentenced for it; and it was not any petit larceny, or else we would not have taken it back. That is my explanation.

Q. You made that same explanation to the court, didn't you?

A. Yes; and the man we played the joke on was there and was asked if we brought it back and he said yes; it was taken back to him and returned in the morning.

Q. Didn't you play the same joke on Mr. Thiede when you worked for him, with a pair of spyglasses?

A. No, sir.

Q. You didn't steal a pair of spyglasses out of the saloon?

A. No, sir.

Q. You knew he charged you with that?

A. No, sir; Charley Thiede never had a pair of spyglasses in his life to my knowledge.

194 Q. What did Thiede ever pay you for your work?

(Objection.)

Q. I will ask you if you didn't leave Charles Thiede's place without getting any pay for your work there?

A. I had good reasons for it.

Q. Didn't you do that?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. What were the reasons?

A. His wife was taken sick and he sent me to Sandy for his sister to come up here, and the lady in Sandy couldn't get away, and when I came back he commenced abusing me like a dog, and threatened what he would do for me, and I got on the Salt Lake Brewery wagon and told him to go to hell, I wouldn't work for him any more, and that was the last of it.

Q. What did he threaten to do to you?

A. He was going to kick me and abuse me, and said I had been bumming around in Sandy when I was there waiting for his sister.

Q. That was the trouble?

A. That's all the trouble. I had to wait for his sister because she couldn't leave at a minute's notice; had his horse and buggy to fetch her home, and Mrs. Thiede was there terribly sick at the time.

Recross-examination by Judge CHERRY:

Q. That was three years ago, October and November?

A. Three years this fall.

Redirect examination by Judge HOWAT:

Q. Whom were you convicted before?

A. The police court at Murray.

195 Q. It was not in the district court?

A. No, sir.

Q. Ever accused any time excepting that time?

(Objection. Objection overruled. Exception.)

A. No, sir; never.

Q. You say you worked for your father in Mt. Olivet Cemetery?

A. Yes, sir.

Q. What is his position there?

A. Sexton.

(Objection as trying to prove the reputation of the father.)

(Objection overruled. Exception.)

A. He has been sexton of Mt. Olivet Cemetery for twelve years.

Q. And the work you did out there was assisting him, you say?

A. Yes, sir.

The court gave the customary admonition to the jury and adjourned until 2.00 p. m.

196 MONDAY AFTERNOON.

JAMES GILBERT, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Judge CHERRY. We object to this witness on the ground that we were not notified of his being a witness until to-day, and his name was on one of the original lists and stricken off.

(Objection overruled. Exception.)

Q. Where do you live?

A. Murray.

Q. Did you know Mrs. Charles Thiede in her lifetime?

A. Yes.

Q. Do you know Charles Thiede?

A. Yes.

Q. Did you know of her being killed one Monday night or between that and Tuesday morning sometime?

A. Yes, sir.

Q. When did you last see Mrs. Thiede in life?

A. I believe it was the 30th of April, the evening before she was killed, or that night.

Q. That was Monday evening?

A. I believe it was.

Q. Where did you see her?

A. Coming out of the saloon.

Q. What way was she coming?

A. Very fast, with Mr. Thiede following her up.

Q. When you say very fast, was she walking?

A. Partly on a run when I saw her; I had occasion to drive there, and was waiting there when Mrs. Thiede came running out and Mr. Thiede after her.

Q. Anything said between them?

A. Yes, sir; Thiede says, "Here is Mrs. Gilbert." My lady was with me, and I could see they had been having a quarrel, as she would not stop and speak.

Judge Cherry asks that be stricken out.

197 The COURT. That may be stricken out.

Q. State to the jury what her appearance was as to being alarmed, excited, or otherwise.

(Objection, unless he states what he saw and what he observed—not his conclusion.)

The COURT. He may state.

A. As I was saying, she was going very fast, and Mr. Thiede was right behind her following her very close, and he turned around and saw me——

Q. State whether or not Mrs. Thiede appeared to be excited, alarmed, or otherwise.

(Objection.)

The COURT. He may state what her appearance was.

(Exception.)

A. She seemed very much agitated.

Q. At what?

A. She was excited, certainly; she looked bad.

Q. State whether she appeared alarmed or afraid or otherwise.

(Objection as leading, suggestive, and calling for a conclusion. Objection overruled. Exception.)

A. Yes; she seemed alarmed and excited.

Q. What time of the evening was that?

A. I can't tell exactly the hour; it was after sundown.

Q. Monday afternoon?

A. Yes, sir; and the 30th of April; I believe it was the night before this transpired.

Cross-examination by Judge CHERRY:

Q. You say it was after night—evening?

A. Yes, sir.

Q. A little dark?

A. The sun was down.

Q. Which way were you going?

A. I was going home.

Q. What direction?

A. South.

Q. When you saw this?

A. Yes, sir.

198 Q. You were going along the cou'ty road?

A. Yes, sir.

Q. Across the bridge?

A. Yes, sir.

Q. Going up toward the hill?

A. I come to the saloon and turned my team, coming from the north right across over the bridge.

Q. Then turned toward the saloon?

A. Yes; I turned my team around when this occurred.

Q. What door did they come out of?

A. Out of the west door.

Q. Which way did Mrs. Thiede go?
A. Went right down to the house; he called her back, but she wouldn't come.
Q. I didn't ask that.
A. I got that in.
Q. You are anxious to tell all you can?
A. I am telling just what transpired; that is all I want to tell.
Q. How far were you from the south door of the saloon?
A. Right at the edge of the saloon.
Q. Were you in the front of the south door?
A. No, sir; I was at the end of the saloon.
Q. Which end?
A. South end on the south side; the west end on the south side.
Q. The south side of the saloon?
A. Yes, sir; the west end on the south side.
Q. You turned your team there and went back?
A. Yes, sir.
Q. Did Mrs. Thiede have a shawl on?
A. No, sir; she had nothing on her head at all.
Q. Just going down without anything over her head; had no shawl on?
A. Not at all.
Q. Thiede says, there is Mr. and Mrs. Gilbert?
A. Yes, sir.
199 Q. Your wife was with you?
A. Yes, sir.
Q. Then when you turned your team did you go on away?
A. Yes.
Q. Didn't stop any longer?
A. No, sir.
Q. Just drove down, turned, and came back?
A. We stopped and got some beer—bock beer; Thiede got us some beer, and his wife went on down to the house, and wouldn't stop when he called her back.
Q. Had you turned, or were you in the act of turning?
A. I was turning, and stopped when they came running out.
Q. You drove by the south door?
A. Yes, sir.
Q. Was the door open?
A. Not the south door.
Q. You turned and were going back, but stopped when they came out?
A. Yes, sir.
Q. And they came out, and then you were looking toward the east?
A. I was looking toward the west; I was on the west end.
Q. Hadn't you turned your team around?
A. I had not got at the front of the saloon on the south side; my team was turned around, but I was at the end of the saloon.
Q. You were then faced toward the east?
A. Yes, sir.
Q. When they came out going west?
A. Yes, sir.

Q. Could you see Mrs. Thiede's face as she went toward the house?

A. I seen her when she came out of the saloon until she got past my buggy; that was a rod in front of the west side of the saloon.

Q. You were looking to the east, and she started to go west and went on down?

A. Yes, sir.

Q. Was she trembling?

A. She looked very much agitated.

Q. Was she trembling?

A. I couldn't say.

200 Q. You didn't notice that?

A. No, sir; but I could see she was very much put about.

Q. What did you see that led you to think that?

A. She looked bad and scared.

Q. In what way; explain what you saw.

A. When a person looks put out and agitated they look different from the way they are naturally.

Q. What did you see that led you to that opinion?

A. She looked so bad.

Q. What did you see; what attracted your attention?

A. The way she looked.

Q. How did she look?

A. Pale and agitated and scared, she came out very fast indeed.

Q. Walking fast?

A. Yes, sir.

Q. You and Thiede had some trouble some time ago?

A. No, sir.

Q. You didn't have him arrested for selling liquor on Sunday?

A. Yes, sir.

Q. Didn't you come up and spy around the saloon to get the evidence, you and another man?

A. I was there one night, when I was sent there on business.

Q. That was your business?

A. Yes, sir; that was my business that night.

Redirect examination by Judge HOWAT:

Q. Selling liquor on Sunday in violation of the law?

A. I was acting as constable at that time and directed to go there on business.

Q. And instructed to do this very thing?

A. Yes, sir.

201 Q. What was Thiede's appearance when you first saw him?

A. I can't tell exactly; he seemed to be following the lady close, and when he saw me he stopped.

Q. Was he angry or otherwise, apparently?

A. He didn't look natural at all.

Recross-examination:

Q. Did he say anything any further than what you have testified to?

A. No, sir; he called his wife back, that is all.

Q. Called her attention to your being there?

A. Yes, sir.

Q. At the time you said you were sent there by an officer, you made that your business to go there and see if he was selling liquor on Sunday?
A. Yes, sir.
Q. One evening?
A. Yes, sir.
Q. You crawled around the back of the saloon?
A. No, sir; I walked; I don't crawl around like that.

202 Mrs. LILLIE BIRCH, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. Do you talk English?
A. Yes, sir.
Q. Are you a Swede?
A. No, sir.
Q. Do you know the defendant, Charles Thiede?
A. I have known him about three years past.
Q. Did you know his wife in her life time?
A. Yes, sir.
Q. Do you know when she was killed?
A. Yes, sir.
Q. Are you married?
A. Yes, sir.
Q. Where do you live from where Thiede's saloon is?
A. About 100 yards, or maybe a little more, west.
Q. Which direction?
A. West.
Q. When did you last see her? Did you see her Sunday evening before she was killed?
A. Yes, sir.
Q. What time?
A. About half past 9.00 o'clock.
Q. Where did you see her?
A. At my house. She came to my house crying Sunday evening and said Mr. Thiede ——
Q. She came to your house crying Sunday evening about half past nine?
A. Yes, sir.
Q. How long did she remain in your house that evening?
A. I don't know how long, but she didn't stay very long.
Q. Was she crying while she remained there?
A. Yes, sir.
Q. Was she crying or not when she left.
A. She was not crying when she left.

Cross-examination by Judge CHERRY:

Q. Didn't you see her before that Sunday evening?
A. I didn't see her in the day.
203 Q. Did you see her Monday evening?
A. Yes, sir.
Q. About what time?
A. About nine o'clock.
Q. Where?

A. Down by the saloon.

Q. Did you have any talk with her?

A. A few minutes.

Q. Who was with you?

A. My sister.

Q. How long did you talk with her?

A. Maybe 15 or 20 minutes.

Q. Was it near the saloon?

A. Yes, sir; just the west end of the saloon.

Q. I will ask you if Mrs. Thiede didn't have some wine brought out and treat you and your friends at that time?

A. Yes, sir.

Q. Who brought it out?

A. Mr. Thiede.

Q. Who called for it?

A. Mrs. Thiede.

Q. He brought it out at her suggestion?

A. Yes, sir.

Q. Did they appear friendly to each other while you were there?

(Objection as not cross-examination. I ask simply about Sunday evening.)

The COURT. Confine yourself to the examination in chief.

Judge CHERRY. This witness has testified to the conduct of the deceased on Sunday evening, the evening before the one I am interrogating her about. The purpose is to show the relations of these parties.

The COURT. Do you claim the right to cross-examine this witness on any time?

Judge CHERRY. Any reasonable time that would go to show the relations. She has already testified Mrs. Thiede came into her house Sunday night crying and she saw her the next evening, and I desire to know the apparent relations at that time. There is an inference in the first,

204 and I have a right to explain that inference by subsequent conduct.

The COURT. I think counsel should confine himself to the direct examination, and then if he wishes to recall the witness he can do so.

(Exception.)

205 JACOB LAUENBERGER recalled.

Judge HOWAT. I want the record to show that the defendant consents that Mr. Gronosky act as interpreter for this witness.

Judge CHERRY. I consented the other day, and it is the same witness.

Q. If you say you consent it will save controversy. Do you consent?

A. (CHERRY.) I never made any objection. I consent.

Jacob Lauenberger was examined through Louis Gronosky.

Q. State when you were first informed of Mrs. Thiede being killed.

A. Mr. Thiede called at his door and called him.

Q. What time was it, as near as you can tell?

A. He can't say positively, but it might have been between three and four o'clock in the morning.

Q. What did the defendant, Thiede, say to you?

A. He said, "Father and mother" (to him and his wife), "my wife is dead."

Q. What did Thiede say to you that morning about what transpired at your house Sunday night about his striking his wife?

(Objection as repetition.)

The COURT. He may state until we see what it leads to.

(Exception.)

A. He said he said something to him that morning, but he is not sure positive what it was he did say.

Q. Did Charles Thiede that morning tell you not to say anything about what you saw in your house Sunday evening?

(Objection as leading and having been answered.)

The COURT. When there is an interpreter it is difficult to get the questions, and he may answer.

(Exception.)

206 A. Tuesday morning, when he was handcuffed, he told the witness not to say anything about what happened in his house the previous night; the Sunday night.

CHERRY. We ask the testimony of this witness on this subject be stricken out as having been answered on the former examination.

The COURT. The evidence cannot be stricken out. I passed on that before.

Q. Did you see the body of Mrs. Thiede that morning when you got up?

A. He didn't see her in the morning, but the same day.

Q. When did he first see her after she was dead?

A. He saw her after Mr. Thiede came and called him.

Q. When Thiede came to the door, did he have a light or not with him?

A. He didn't have a light when he called him, but when they came to view the corpse he had a light.

Q. Did you see what condition Thiede's hands were in as to being bloody or not?

A. They were bloody.

Q. What, if anything, did Thiede say as to how he thought his wife was killed?

(Judge Cherry asks he be instructed to state all he said on that occasion.)

The COURT. He may state what occurred between the parties.

A. He told the witness he thought his wife killed herself.

Q. What did you say to him then?

A. He told him, No, sir; that is not self murder, because there is no knife around here.

Q. What did Thiede say then?

A. He told the witness he thought some one tried to have connection with her.

207 Q. Where was the body lying when you saw it first?

A. About three or four feet from the saloon, toward the bridge.

Q. [Explains diagram to witness.]

The COURT. Is that map correct?

A. Yes, sir.

Q. Point out where she was lying.

A. [Witness indicates near the southeast corner of the building on the east side.]

Q. How far from the southeast corner of the saloon?

A. About three or four feet it might have been.
Q. Was she dead when you saw her?
A. Yes, sir.
Q. What, if anything, did Thiede say his wife said to him when he found her?
A. He said when he came out he thought it was someone drunk lying around there, and he was going to raise them up.
Q. Did Thiede tell you that his wife spoke to him?
A. No, sir.
Q. When Thiede got the light, did he see the condition of Thiede's hands as to being bloody or not?
A.
Judge CHERRY. That has been answered.
Q. Were both hands bloody, or which hand was bloody if not both?
A. Both of them.
Q. Did Thiede touch his wife's body after you got out there or not?
A. He was going to cover her over, but the witness told him to leave her alone till they could get a doctor, and then he pulled one of her eyes open and looked in.
Q. How was Thiede dressed as to having a coat on or not?
A. He had sort of a white dress on, something, I suppose, like a night-gown, the way he described it.
Q. Was it a white vest?
208 A. He had on something white, but he couldn't say now what it was.
Q. State whether Thiede washed his hands or not.
A. In the saloon he washed his hands.
Q. In what vessel, if any?
A. Something like a wash basin; a tin washbowl.
Q. Where was it?
A. Behind the door that faces the brewery; right behind that door.
Q. Did he see the tin basin?
A. He saw it.
Q. Does he know what became of the basin and the water that was in it?
A. He cannot tell whether it was thrown out or not.
Q. He don't know what became of the basin of water?
A. No, sir.
Judge CHERRY. Is that his full answer?
A. He said he don't know; he couldn't tell whether it was thrown out or not; that is his full answer.
Q. Did Thiede and you go after the doctor?
A. Yes, sir.
Q. Before going for the doctor, did Thiede put his coat on?
A. Yes, sir.
Q. Where did he get his coat?
A. He got his coat in a room of the house.
Q. How did he get into the house?
A. The door was locked, but they went in through the window.

Cross-examination by Judge CHERRY:

Q. Have you any way of knowing what time it was Mr. Thiede called you?

A. He cannot positively say, but it might have been three or four o'clock.

Q. Might not it have been one or two o'clock?

A. He don't know.

Q. He is only guessing at the time?

A. He had no watch and he couldn't tell; he don't know.

209 Q. Were you asleep when he called at your door?

A. He was asleep.

Q. Did he rap at the door?

A. Yes, sir.

Q. He rapped more than once?

A. He rapped once and told, Father and mother, come out. And he told his wife, He is just fooling with us. And he didn't go.

Q. Did he call again?

A. He came again, knocked at the door, and called, and then he got up and came out.

Q. Ask him if he will tell whether he spoke in a loud voice or not.

A. Yes, sir.

Q. How loud did he speak? Tell him to speak out.

[Witness indicates.] He hollered that way, and said, My God! My God! Father and mother, come out. My wife is dead!

Q. Ask him if he said to hurry and come quick?

A. Yes; he said, "Hurry and come."

Q. Ask him when he first came out what Thiede was doing.

A. They both went right straight to the saloon.

Question repeated.

A. Hollering, My God! My God!

Q. In what position was he using his hands?

A. [Witness indicates.]

Q. Ask him whether he put his hands together when he was talking.

A. He can not positively say whether he did or not.

Q. Ask him if he was frightened and excited at that time.

A. Yes; he said he was. That thing happening at midnight, he was excited.

Q. Ask him if he put on his clothes before he went out.

A. Yes; he put his clothes on before he came out of his room.

210 Q. Did he put on his coat, vest, pants, and shoes?

A. He had no coat, but a sort of vest, pants, and shoes.

Q. Did he put on his hat?

A. He can not tell whether he had his hat on or not.

Q. Ask him where they went the first thing after they came out of his house.

A. To the saloon.

Q. In the saloon?

A. Yes, sir.

Q. Didn't they go right to where the body lay, first?

A. He don't believe it, but he couldn't tell whether they did or not.

Q. Ask him if it was because he was excited and frightened he can't remember.

A. He was kind of overcome to think the woman should be dead.

Q. What way was the woman lying, with reference to being on her side, back, or face, when they first got there? Ask if Mrs. Thiede had her feet crossed.

A. [Witness indicates.] Yes.

Q. Did she have her feet crossed?

A. Yes, sir; one over the other.

Q. Ask if her clothes were pulled up above her shoe tops any.

A. No, sir.

Q. Did the witness touch the body of Mrs. Thiede at that time?

A. He didn't touch her.

Q. I will ask if Mr. Thiede wasn't still moving his hands and making a noise, making a moaning about his wife's death, at that time?

A. Yes; he did.

Q. Ask him if he didn't cry out loud and make a noise like crying.

A. The same thing: My God! My wife is dead! That is about what it was.

211 Q. Ask him if he didn't take hold of her, in the act of lifting her up, when he stopped him.

A. Yes, he caught hold of her body, and he told him, Charley, don't disturb her till the doctor comes.

Q. Did he lay her down again?

A. He didn't raise her; he was just in the act of raising her up, but left her just where she was.

Q. And he put his hands around her?

A. He just put his hands to her side, but didn't lift her up, and left her in the same position she laid.

Q. Did they look around there any to find the knife?

A. Yes, sir.

Q. Did they both look, he and Thiede?

A. Yes, sir; just a little around where the body lay.

Q. Was the body bleeding any at that time?

A. The blood that he saw didn't run any.

Q. How long a time did they stay at the body after they first went out there?

A. Three or four or five minutes, he can't tell exactly.

Q. Where did they go?

A. From there they went to the saloon, and from the saloon to the house where Thiede put his coat on.

Q. When did he wash his hands?

A. He washed his hands in the saloon before they went down to the house.

Q. Ask him where he got the water in that wash pan? Ask him if he didn't walk around behind the bar and get the water out of that faucet behind the bar?

A. No; he says he went behind the door and washed his hands and hollered, My God! my God!

212 Q. Is there any other place to draw water; any other pipe or faucet to draw any water in that saloon except that faucet behind the bar?

A. He don't know.

Q. Hasn't he been in the saloon a great many times?

A. He was many times, but he don't know.

Q. Ask him if he does not know there is no other place to turn the pipe to draw water except behind the bar?

A. He says he doesn't know; he knows in front of the brewery you can turn a faucet and draw water.

Q. In the saloon, I am talking about.

A. He don't know; he cannot tell; he says he don't know whether there is water in the cellar you can use or not.

Q. Ask him what he wiped his hands on.

A. He don't know.

Q. Did he wipe his hands?

A. He don't know; he said it was dark.

Q. Was it dark in the saloon?

A. In the saloon there was light, but he went out of the saloon.

Q. Ask him if he went in with Charley?

A. He cannot tell; he is not positive.

Q. Did he go clear in the saloon, or just step to the door?

A. Yes, sir; he was inside of the saloon.

Q. Did he stay there as long as Charley Thiede stayed?

A. Yes.

Q. Did they come out together?

A. Yes, sir.

Q. Then they went down to the house and Thiede got his coat?

A. Yes, sir.

Q. Ask him if he put on any more clothing than what he had on before they started.

A. No, sir; he didn't.

213 Q. Ask him if he went to the house with Thiede.

A. Yes, sir.

Q. Did they try to get in the doors?

A. Mr. Thiede tried to get in the door, but he couldn't, so he got in through the window.

Q. Did he try more than one door?

A. No, sir; only one.

Q. Which door was it?

A. The right door as you come from the saloon toward that door.

Q. The door on the east side of the house?

A. The door that leads right out to the garden toward the saloon.

Q. About how long was it after they left the body and went in the saloon, and went down to the house and got the coat, before they started for the doctor—how much time was taken up there?

A. He cannot tell how long; he had no watch with him.

Q. Can't he estimate the time?

A. He says he can't tell; perhaps Mr. Thiede has a better memory than he.

Q. I will ask him if his memory is not very good?

A. It is not very bad, but just that he cannot tell how many minutes it would take.

Q. Did they walk over to the doctor's office?

A. Yes, sir.

Q. Ask him where the doctor's office is.

A. He lived somewhere near Mr. Haynes' house or near the post-office.

Q. Ask him if it was Murray, on the State road.

A. Yes, sir.

Q. Ask him, in going over there, if anything was said—if Thiede said anything—if he made any noise; what was said and done.

A. Yes; he said, Oh, my God, my wife is dead!

Q. Did he repeat that in going over there after the doctor?

A. Yes, sir.

214 Q. Ask him if they had any trouble, or if any time was spent in getting the doctor aroused and awakened when he was there.

A. As soon as they knocked at the door the door was opened, and they said the doctor was there, and he soon dressed himself and came out; it might be ten minutes or so.

Q. Ten minutes before he was dressed?

A. Ten minutes before he came out—perhaps more—I can't tell exactly.

Q. Ask him if they spent any time in Murray before they started back to Thiede's after the doctor got up.

A. He said Thiede remained there to telephone, and he and the doctor went on down to the house.

Q. Ask what road they went as they went over to the house.

A. To the right hand, past the smelter.

Q. Ask him if it was the main road.

A. The road from Haynes'—the main road.

Q. Ask him if in going over there he and Thiede walked fast or hurried in any way.

A. Yes, they went fast. Thiede went ahead of him; he went faster than he did. They went fast, but Thiede went faster.

Q. Which way did they go in going over?

A. They crossed the railroad and went by way of the smelter. They went the back way and crossed the railroad, so as to get there the nearest way they possibly could get there.

Q. What time did the witness go to bed that night?

A. Perhaps half past nine or ten o'clock—somewhere about that time.

Q. Ask him if after he went to bed whether or not he got up in the night before Thiede called him.

A. He said he got up once; he had occasion to get up.

215 Q. Where did he go?

A. To the water-closet.

Q. The one on the west of his house, next the bank?

A. Between the barn and his house.

Q. Ask him if he left the door of the water-closet open while he was in there.

A. Yes, sir.

Q. Ask him if he had any idea what time that was.

A. He can not say.

Q. Ask him if after he went out of the water-closet he went back to bed and went to sleep again before Thiede called him.

A. When he came out of the water-closet he went to bed and went to sleep again.

Q. I will ask him if while he was in the water-closet he saw or heard any person passing on the road.

A. He saw somebody run by there as he was inside.

Q. Which way were they going?

A. Past the saloon, by the house, he said.

Q. Going west, was it?

A. From what he saw he supposed the party went right by the house.

Q. Going down that way?

A. Going down that way.

Q. Was it a man or woman?

A. A man.

Q. Was it just one person, or more than one?

A. One.

Q. Can you tell how he was dressed? Were his clothes light or dark?

A. Dark clothes; he can not tell whether they were quite black or not, but they were dark.

Q. Was he a large or small man?

A. Pretty good size.

Q. Was he thin or fleshy?

A. Middle-sized man; he was not no slim man, but medium-sized man.

216 Q. Ask him whether he noticed there was a light in the house at the time he went to the water-closet.

A. There was light in the house.

Q. After the witness and doctor got back to the house, ask him how long it was before he saw Thiede again.

A. He came right after them.

Q. Give the length of time between the time he got there and the time they got there.

A. He couldn't say.

Q. Ask him if he and the doctor went into the saloon before Thiede got back.

A. Yes, sir.

Q. Ask him if they didn't get a lamp out of the saloon to go around and look at the body.

A. He had a candle at the time he went for the doctor, and the wind blew so that he couldn't hold it, and he tried to get a lantern, but couldn't get one.

Q. Ask him if when the' came back the saloon was locked or standing open.

A. It was not locked.

Q. They left it open when they went away after the doctor, did they?

A. He is not positive whether it was locked or not, whether the door was open or not; but the door was closed, but not locked.

Q. He is not positive whether it was closed or not?

A. He said the door was closed, but not locked.

Q. Is he positive they were closed?

A. He can not say positively whether it was or not.

Redirect examination by Judge HOWAT:

Q. How was the night, as to being dark or otherwise, when he went out there with Thiede?

A. Tolerably dark.

217 Q. Can you tell what time it was you got up and went out to the closet?

A. He can't tell what time it was.

Q. Did he hear any noise about the saloon at that time or any screaming?

A. No, sir; he didn't.

Q. Did he notice whether there was a light in the saloon at that time or not?

A. When he went to the water-closet the door of the saloon was open and there was light there.

Q. Which door was open, the south or west door?

A. The door going towards the brewery.

Q. That was the south door?

A. The door toward the street.

Q. There was a light in there?

A. Yes, sir.

Q. Did he see Thiede?

A. He didn't see anybody.

Q. Can he say whether it was Thiede passed the water-closet or not when he was in the water-closet?

A. He can't tell; he said a man named Kizer told him they passed by there, but he could not tell.

The COURT. He must not state what anyone told him.

Q. Was the man that passed by there running or walking fast?

A. He didn't run exactly, but walked pretty fast.

Q. He walked fast?

A. Yes, sir.

Q. What is your best recollection as to where you first went after you left the house—that is, after Charley came for you; what is your best recollection as to whether you went first to the saloon or to where the body lay?

A. He can not say certainly whether he went to the saloon first or where the body lay first.

Q. That morning Thiede went to the saloon these several times,

218 what did he do, if anything, with regard to Thiede drinking whiskey?

(Objection as not redirect examination.)

The COURT. The examination has gone into detail; he may answer it.

A. What morning?

Q. After Thiede called you that morning and went to the saloon these several times. What did Thiede do in regard to drinking whiskey?

A. When they started to get a doctor Thiede said, it is rather cold this morning, we will take a drink, and he took a little whiskey, and Thiede did the same.

Q. Is that the only time he saw him drink, that morning?

A. The only time.

Cross-examination by Judge CHERRY:

Q. Did he take the liquor after he washed his hands or before?

A. Afterwards.

Q. After they had been down to the house?

A. After he washed his hands.

Q. Ask him if it was before he went down to get his coat.

A. After he came back from the house.

Q. Ask him if it was not after they came back from getting the doctor, and if the doctor wasn't there at the time, too.

A. No, sir; it was not, because the doctor—he came back with the doctor and the doctor wrote a note out and gave it to him to take to the butcher Weiler.

Q. To refresh his memory I will ask if after they first came back before he took the note if that is not when they drank the liquor.

219 A. He don't believe he did, but he is not positive; he is not sure.

Q. Then he is not certain about the time they drank the whiskey?

A. He says he can't remember.

Q. He was still excited and frightened at that time?

A. Yes; he says he was excited over the matter.

Q. I will ask you if you heard any screams or unusual noise at all that night before Thiede woke you up around the premises?

A. He did not.

Redirect examination by Judge HOWAT:

Q. Was there a large quantity of blood near the body or where it lay?

A. There was lots of blood there.

Cross-examination:

Q. On the ground?

A. On the ground.

Q. Was there any blood on her clothing?

A. He said about her face here, and about her chest.

Q. Was it on her clothing?

A. On her clothing; yes, sir.

220 DR. UNION WORTHINGTON, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. What is your full name?

A. Union Worthington.

Q. What is your profession?

A. Physician and surgeon.

Q. Live in Salt Lake City?

A. Yes, sir.

Q. You made an examination of the dead body of Mary Thiede?

A. Yes, sir.

Q. What did you discover in regard to the wound upon her neck or throat?

A. I discovered a large wound, about six inches in length, extending from one to two inches below the left ear around to the right side, about 2½ inches below the right ear. The depth of the wound was about two or 2½ inches, extending entirely down to the spinal column.

Q. Was the jugular vein severed on either side?

A. The external jugular vein on the left side severed, and what is termed the anterior jugular veins severed, smalled veins, branches of the external jugular.

Q. Was the trachea severed?

A. Above the vocal cords.

Q. Whereabouts was it severed?

A. Just a little below, just at the point of the Adam's apple, from the point in the trachea or thyroid cartilege.

Q. What was the cause of the woman's death?

A. She died from hemorrhage.

Q. Caused by that wound?

A. Yes, sir.

Q. Now, from the nature of the wound, what instrument would you say inflicted it, as to being sharp or otherwise?

A. Unquestionably a sharp instrument.

221 Q. What would you say as to being large or small?

A. I should say a large instrument.

Q. State, in your opinion, from an examination of the wound, whether it had been made with a pocketknife or not.

A. It might be possible, but not at all probable.

Q. State whether, in your opinion, it could be made with a razor.

A. I think not.

Q. State what, in your judgment, that wound on that woman was inflicted with—that is, as to the size and nature of the instrument.

A. It must have been a sharp instrument some six or eight inches long.

Q. The blade that inflicted the injury?

A. Yes, sir.

Q. When you say six or eight inches you mean not less than that?

A. I don't think it could have been done with an instrument less than six inches in length; the character of the wound is such that it apparently had been a sawing motion, inasmuch as there had been three prongs to the wound, one to the left and two to the right.

Q. State whether an injury of that kind could have been inflicted with a large knife with a handle to it.

A. The character of the blades of knives that close up are so variable that it would be hard to say. It might have been inflicted with a knife of that character, but it would not be more reasonable to suppose so than to suppose it had been inflicted with a razor or something of that kind.

Q. I will ask about a knife that does not close.

A. I should think it had been inflicted with that character of a knife.

222 Q. Not a clasp knife?

A. No, sir.

Q. Nor a razor?

A. No, sir.

Q. After that woman received that wound was it possible for her to articulate or speak at all?

A. I think not.

Q. Have you any doubt about it?

A. No, sir; I have no doubt about it in my own mind.

Q. How quickly would death follow from an injury of that kind?
A. Only a few minutes it would take to bleed to death.
Q. How soon would consciousness leave the person?
A. It would leave it very shortly.
Q. Almost instantaneously, wouldn't it?
A. Practically so.
Q. How was this woman as to being a small or large woman?
A. She was rather what you would term a small woman.
Q. Assuming that this woman was resisting to the utmost of her ability, how could this wound be inflicted naturally?
(Objection as not a proper question qualified with the word "naturally.")
Q. Assuming that the woman resisted to the utmost of her ability, what was the probable manner of the infliction of that injury, as to the position of the victim and the party who inflicted the wound upon her.
A. I should say he stood behind and to the side.
Q. State to the jury whether from the character of the wound it could be inflicted if the person who inflicted it had thrown her upon the ground and then cut her throat.
A. It could be.
Q. Do you think it likely or probable the person who inflicted
223 the injury stood in front of the victim?
(Objection as immaterial, incompetent, and irrelevant.)
The COURT. He may give his best judgment as to that.
A. I don't think it probable at all that he stood in front of her.
Q. Did you see the hands of the defendant at this time?
A. Yes.
Q. What day was that?
A. Third day of May.
Q. The hands of the defendant?
A. I saw them on the first day of May, the first day of the coroner's inquest.
Q. The day following the night on which this woman was killed?
A. Yes, sir.
Q. What was the condition of his hands then as to having blood marks upon them?
A. There were, around the finger nails of the left hand and palm of the right hand.
Q. State whether the hands had the appearance of having been washed since the blood came upon them.
A. Yes, sir.
Q. But the blood marks still remained on the finger nails of the left hand and palm of the right hand?
A. Yes, sir.
Q. Did you notice whether or not there were blood marks on his clothing?
A. Yes, sir.
Q. Where?
A. In examining his clothing I found first blood marks upon the inner side of the lining of the sleeve of his coat. I found also blood stains on the inner side of his shirt sleeves below the elbow.
Q. Which arm, do you remember?

A. Both arms on the upper side, on the outer side of the sleeves above the elbow, and I found also a large spot of smeared blood above the left hand vest pocket.

224 Q. I will ask you whether that particular one you referred to had the appearance of being blood; whether or not a bloody hand or some portion of the body, bloody, had been rubbed against it as though going to the pocket?

A. Yes; that was smeared on.

Q. Just at the entrance of the pocket?

A. Yes, sir; just above that.

Q. What else?

A. I found some blood spots scattered around over the face of his white vest, and I also found some blood on the lower left trousers leg towards the bottom, and a spot of blood corresponding to the kneepan of the right knee, which was through the trousers and through the drawers.

Q. Now, what is the effect of time upon blood stain; does their appearance remain the same, or become different?

A. The blood drys after a length of time a" becomes a hard coagula.

Q. Any difference in color when fresh and when five or six months old?

A. Yes, sir; some difference.

Q. What is the difference?

A. The blood after it has been out a certain length of time gets very dark. Shortly after coming out, if it is veinous blood it becomes lighter, and after being exposed for a time it becomes dark.

Q. In five months will it become dark, or in less time?

A. In less time.

Cross-examination by Judge CHERRY:

Q. Did you examine the blood stains carefully upon the pantaloons?

A. Yes, sir.

Q. Did you examine them with a glass?

A. No, sir; it was an ocular examination altogether.

225 Q. Where was the stain on the pantaloons you first described?

A. On the lower part of the left trousers leg.

Q. Where was the other?

A. It was on the spot corresponding to the kneepan of the right knee.

Q. How large a one was that?

A. Fully as large as the kneepan. Just about the same size as the kneepan, occupying that space.

Q. Did that go clear through and stain the drawers?

A. Yes, sir.

Q. The blood spots you saw on the vest were on the left side?

A. I saw one large spot on the left side.

Q. Above the pocket?

A. Above the pocket.

Q. Did you keep any memorandum of this, or are you retaining all this in your memory?

A. I did keep a memorandum; yes, sir.

Q. And have refreshed your memory from that?

A. Yes, sir.

Q. That you say had the appearance of being smeared on?

A. Yes, sir.

Q. By coming in contact with something that had blood on it?
A. Yes, sir.
Q. The spots on the sleeve of the shirt; which sleeve did you find them on?
A. Both sleeves.
Q. How many spots did you find on the right sleeve?
A. I couldn't designate the number.
Q. Didn't you keep a record of that?
A. No, sir.
Q. Did you keep a record of the number on the left?
A. No, sir.
Q. Can you remember how many you found on the left or what part of the sleeve it was on?
A. On the interior portion low down on the inner side of the sleeve
226 Q. How was it with the left?
A. The same way with the left. Higher up it was on the outside.
Q. Did those stains all go through the shirt and stain the underclothing; did you notice?
A. I don't think there was any underclothing beneath the shirt.
Q. Don't think he had on undershirt?
A. I don't think so. If so, I don't remember.
Q. Did you see the defendant undressed?
A. He was undressed in my presence
Q. Then if there had been any undershirt or stains on that, you would have taken notice of it?
A. Most likely I would.
Q. You have looked at your memorandum before coming on the stand recently, have you?
A. I have no record of it at all.
Q. No record of any underclothes except drawers?
A. That's all.
Q. You say you found a stain on the lining of the coat sleeve?
A. Yes, sir.
Q. Which sleeve?
A. On both of them, I think. I couldn't state positively.
Q. Are you sure of that?
A. I can not state positively.
Q. Was that a large or small stain?
A. That was more of a smear.
Q. A large or small stain?
A. Small, as I remember.
Q. Can you designate the size of it.
A. No, sir; it was just as though it had rubbed over something with blood on it.
Q. Can you give about the size of the largest stains of blood on his shirt?
A. There was quite a good deal of blood on that shirt sleeve on
227 the under side, just on the upper part, on the under side of the lower portion of the shirt sleeve—smeared on.
Q. Wasn't there any on the outside?

A. Not at that point. Of course it had soaked through and showed on that side, but it was more plainly visible on the under side.

Q. On the under side than the outside?

A. Yes, sir.

Q. The one highest up on the arm?

A. No, sir; that was more plainly visible on the outside.

Q. These were lower down?

A. Lower down.

Q. Didn't the shirt have the appearance—or didn't he have the cuff turned up?

A. I should judge from the blood stains that he had his sleeves rolled up to the elbows at least.

Q. Didn't it have the appearance of cuffs or 'ris'bands turned up?

A. It had the appearance from the blood stains as though the shirt had been rolled up to at least the elbow.

Q. Did you have that in your memorandum?

A. Yes, sir.

Q. Where is your memorandum?

A. In my pocket.

Q. Look on your memorandum and see if you have that, how high his sleeves were rolled up?

A. I have; large spot of blood over vest pocket, lower left hand.

Q. You are stating that from memory?

A. Yes, sir; that is from memory.

Q. What time in the day did you see the defendant?

A. I can't state positively what time it was.

Q. In the forenoon or afternoon?

A. I think it was along about 11 o'clock; though it may have been in the afternoon.

Q. Where did you see him?

A. In Skewes' undertaking establishment.

228 Q. Was that before the inquest was held?

A. Yes, sir.

Q. They had not commenced holding the inquest?

A. I don't think so.

Q. But after the parties all came up from the scene of the homocide?

A. Yes, sir.

Q. Who was present besides yourself?

A. Sheriff McQueen, and I think one or two or his deputies.

Q. Any other physician?

A. I think not.

Q. You say you saw the hands of the defendant?

A. Yes, sir.

Q. Did you make a careful examination of them?

A. Yes, sir.

Q. Just with the eye?

A. Yes, sir.

Q. Did he have any objections to your looking at his hands?

A. No, sir.

(Objection as immaterial and incompetent, and motion made to strike it out.)

Judge CHERRY. It might be important to know whether he was forced. His purpose is to show he didn't make any resistance.

The COURT. It may stand as already answered and we will see what it leads to.

Q. Did you examine both of his hands?

A. Yes, sir.

Q. Was there anything said to him by you in reference to examining his hands?

A. I don't remember to have said anything to him.

Q. Did anyone else ask him to show his hands?

A. Not that I know of.

Q. Didn't you ask him to let you look at his hands?

A. I think Sheriff McQueen said to me to look at his hands.

229 Q. Did you take hold of them to look at them?

A. I think I did. I know that I saw both sides of his hands.

Q. You just glanced at them and saw stains on them?

A. Yes.

Q. You say it showed evidence of his hands having been washed?

A. It looked as though that had been the case.

Q. You could see some remnants of stains there on the palm of his hand?

A. Yes, sir.

Q. And around the fingers, on the outside of the fingers?

A. Yes, sir; and under the finger nails.

Q. Did you examine that?

A. I only looked at it. I could see the discoloration.

Q. Could you tell whether it was blood or dirt?

A. I could only see it from the discoloration.

Q. Would you swear that was blood under the finger nails?

A. I can only say it is my opinion.

Q. Did you make a careful examination to see if that was blood?

A. I would swear it was blood.

Q. Did you make a careful examination to see whether that was blood or not?

A. So far as a careful examination can be made in that way, by observation.

Q. You just looked at it? About how long were you engaged in looking at his fingers and hands?

A. Not more than a passing moment.

Q. And you in your mind determined that was a blood stain?

A. I didn't pass my eyes away and then at something else; I saw what I was looking at.

Q. You say a passing moment?

A. Yes, sir.

230 Q. Did you attempt to remove any particles to see if they could be removed?

A. No, sir.

Q. Would you swear they were blood stains or dirt?

The COURT. He has answered that.

Q. Might it not have been stains from other sources?

A. I think not.

Q. It could not have been? Couldn't it have been from red paint or anything of that kind?

A. I think not.

Q. I am asking you if it might not have been that?

A. The possibilities are unlimited.

Q. I am asking you if it couldn't have been possibly some other color besides blood?

A. It may possibly have been, but not by any means probable.

Q. Can you pretend to tell from the nature of the wound what position the person was in when she received the wound?

A. As a matter of speculation only.

Q. You say she might have been lying down or standing up?

A. Yes, sir.

Q. Or she might have been leaning over?

A. In the range of possibility.

Q. Someone could have had hold of her and forced her forward and cut her throat by leaning her forward, couldn't they; or by leaning her backwards and cutting her that way? It could have been done in either position, couldn't it?

A. It is possible.

Q. It might have been done in that way [indicating]?

A. Hardly. Hardly probable in the last position.

231 Q. Not probable?

A. No, sir.

Q. Can you pretend to say from the looks of those wounds the length of the blade of that knife?

A. I can not say absolutely as to that. It is a matter of opinion.

Q. It might have been inflicted with a knife blade 12 in. long?

A. Yes, sir.

Q. Or with a sword that would be a foot or two feet long?

A. Yes, sir.

Q. It might have been done with a knife blade six inches long?

A. Yes, sir; it would have been possible.

Q. Isn't it very likely; wouldn't that be sufficient, a blade six inches long?

A. I hardly think it would; I think a larger instrument was used.

Q. Could you tell whether it was a sharp pointed instrument or blunt instrument?

A. I should think the instrument had rather a sharp point.

Q. Couldn't it have been inflicted with a razor?

A. Possibly, but hardly probably.

Q. Did you hear Dr. Benedict's testimony?

A. I heard what he had to say this morning.

Q. Did you hear what he had to say the other day with reference to its might having been inflicted with a razor?

A. Yes, sir; I heard him testify to-day.

Q. Did you hear him testify at all that it might have been inflicted with a razor?

A. I don't remember his saying anything about a razor.

232 Q. Have you been conversing with any other physician in reference to this matter?

A. Dr. Benedict, Dr. Richards, and myself made an examination of the body of Mrs. Thiede at the time, together, and I have seen Dr. Richards on one or two occasions since, and have conversed with him.

Q. You have compared notes with him in regard to the matter?

A. Yes, sir; it was remarked by him at the time——

Q. You say it is impossible for any person to articulate after such a wound; I will ask you if it is possible for a person receiving such a wound, after lying on the ground a long time, say from thirty minutes to two hours, if on being suddenly or violently pushed or turned over or lifted up, there would be a probability of any sound proceeding from the cadaver?

A. Yes, sir.

Q. From what cause or reason would that proceed?

A. Because there is always left in the lungs a certain amount of air after death, and by handling that air may be forced out through the windpipe or trachea, and if the opening of the windpipe were interfered with in any manner, as by a clot of blood, it might make a gurgling sound or a noise as though gas were escaping through something.

Q. I will ask you if that would not be very probable in a case of this kind, where a woman was killed by a wound in the neck and the trachea severed, if on moving the body it would not be probable a gurgling sound would be heard?

A. It would depend upon the clotted condition of the blood in the wound.

Q. Would not that be probable?

A. That would depend upon her position, how she was lying.

233 If the position of the person were such as to allow complete drainage from the wound, then there would likely be no clots of blood in that wound to amount to anything; but if she were lying in a position where there would be a coagula or clot formed in the wound you would likely have that sound.

Q. It is likely that a blood clot will form where there is no particular reason, where there is a severing of an organ like that; it is very common for a clot to form there after the cut is made?

A. It would depend upon the position for drainage.

Q. It is not an uncommon thing for sounds to proceed from a cadaver at any time in handling it?

A. No, sir.

Q. In the nature of a sigh or gurgle?

A. More of a gurgle.

Q. You say the left jugular vein was severed?

A. Yes, sir.

Q. Wasn't the right one severed?

A. No, sir.

Q. Was the left carotid artery severed?

A. Left common carotid artery severed.

Q. How about the right one?

A. It was not; and the pneumo-gastric nerve was also severed on the left side.

Q. I will ask you the probabilities of a person inflicting a wound of that kind as to receiving and getting blood on their clothing; would they be likely to get blood on their clothing while inflicting such a wound?

A. Yes, sir.

Q. Would it not be almost impossible to avoid getting blood on their clothing if they were struggling and if the woman was resisting?

A. It would seem almost impossible for a person not to get
234 blood on them. Blood would fly immediately on severing these blood vessels.

Q. It would fly with some force in the different directions?

A. Yes, sir; it would fly in a straight stream most likely, unless interfered with.

Q. Several blood vessels—it would be apt to fly in different directions?

A. Yes, sir.

Q. You say you examined the body?

A. Yes, sir.

Q. Have you stated all the observations you made of the body?

A. No, sir.

Q. Did you state anything about seeing a wound on the hand?

A. I have not stated that that I know of.

Redirect examination:

Q. Was there a wound on the left hand?

A. Yes, sir.

Q. What sort of a wound?

A. An incised wound over the bone of the index finger at that point [indicating], metacarpel bone.

Q. A recent wound?

A. Yes, sir.

Q. As to the quantity of blood, it would depend a great deal upon the position they stood to the person when they inflicted the wound?

A. Absolutely.

Cross-examination by Judge CHERRY:

Q. The wound was on which hand?

A. Left hand; on the metacarpel bone of the index finger of the left hand.

Q. How long was that?

A. Three-quarters or half an inch.

Q. How deep was it?

A. It extended through the skin.

Q. To the bone?

A. I couldn't see whether it went to the bone or not. I didn't see the bone.

Q. That is the only wound on her left hand?

A. The only wound I remember seeing.

235 Q. If there had been others you would have seen them?

A. Most likely.

Q. You took a memorandum of that also?

A. Yes, sir.

236 WILLIAM MCQUEEN, a witness sworn on behalf of the prosecution, examined by Judge Howat, testified as follows:

Q. What is your name?

A. William McQueen.

Q. Sheriff of this county?
A. Yes, sir.
Q. Were you such sheriff on the first day of May last?
A. I was.
Q. Do you know the defendant, Thiede?
A. I do.
Q. How long have you known him?
A. I couldn't say positive.
Q. As to being for several years or a less period?
A. I think about two years.
Q. Did you receive any communication by telephone in regard to Mrs. Thiede being killed?
A. I did.
Q. From whom, do you recall?
A. I can not say who it was from, but it came from Murray.
Q. Did you go down there?
A. I did.
Q. Any person go with you?
A. Yes, sir.
Q. What time in the morning did you go there?
A. Got there about a quarter to six?
Q. Was it daylight or dark then?
A. Daylight.
Q. Where was the defendant when you first saw him?
A. Standing in the south door of the saloon.
Q. What did he do when he saw you first; what did he do as to coming out or going in?
A. He turned around and went back into the saloon.
Q. What part of the saloon did he go to?
A. I don't know just where he went.
237 Q. When did you next see him?
A. Behind the bar, about the center of the bar.
Q. What did you say to him, if anything?
A. I didn't say a word to him.
Q. When you first spoke what did you say to him?
A. I walked in this west door and walked right up close to the end of the bar; he was drinking whiskey at that time out of a glass and I stood right close to the end of the bar, and he walked out with his head down and never said nothing till he passed me. After he got by, well, he said, I killed my wife last night. I said, I think that is right; it looks that way. Then he turned around and said, I didn't kill her; they did. What do you mean by that, I asked him. He said the army. I said, then I put you under arrest.
Q. Now, what did the defendant do after that, or say?
A. We passed out of the south door onto the street.
Q. Who passed out?
A. Thiede and myself.
Q. Who was with you at this time?
A. John Montgomery.
Q. You passed out of the south door of the saloon; go on.

A. Into the yard in front of the saloon. There he wanted to know what I was down there for; what all those people were gathering around; it was his wife that was killed and nobody's business, and he didn't want the people going on his premises; that I had no right there. I said, I have, and you go and sit down on those steps against the brewery, and I marched him over and set him down, but he would not stay, and finally Albert Cahoon, another deputy, came up, and I said, take care of him and make him stay there while I look around, and I said, you
238 get a rope and we will tie him, and he said there were two men come to his house about 12 o'clock at night——

Q. Did he say anything about their nationality?

A. He don't know; he said he thought they were Swedes or Finlanders.

Q. What did he say they did when they came there?

A. He said they might have been the two men that killed her for all he knew.

Q. Did he say what they had got at his saloon that night?

A. I am not positive whether he said they got a bottle of whiskey or got drinks, but my memory is that they got a bottle.

Q. He said they might have killed her?

A. Yes; and I wanted to know where they lived, and he said somewhere over here, and I said what do you mean by that, and he said it was called Roderburg, and I said lets hunt them up, and we went and hunted a long time——

Q. Never mind. Did you make any examination as to a point near the southeast corner of the saloon to see whether there was any blood there or not?

A. Yes, sir.

Q. Was there blood?

A. There was.

Q. Can you point about the location of that blood? Was it blood marks or a long pool of blood?

A. A pool of blood; it would be about four or five feet from the end of the saloon, and about the same distance north of this corner of the saloon.

Q. Now, state whether or not you made any examination to see whether there were any signs of a struggle there or near that point?

A. I found the place of the struggle, I don't know the exact distance, 30 or 40 feet, where some one had a scuffle.

239 Q. Did you examine to see if there were any blood marks on any portion of the saloon?

A. There were blood marks on the south door of the saloon.

Q. Now, what appearance did these blood marks have as to being smeared, or whether the blood spurted and struck it?

A. Spurted, and after they struck they run down a little and made it a pear shape. They were single drops.

Q. Can you recall how many blood marks were on the south door of the saloon?

A. Seven.

Q. Which side of the door, inside or outside?

A. Outside.

Q. State whether there were any traces of blood from the south door to the place where the woman had been found dead?

A. There was.

Q. Where did you see them?

A. The first part was about 20 feet east of the south door of the saloon, then there were several along till we passed by the end of the saloon to the east, some thirty or forty feet distant. There were several spots there where there had been a scuffle—about as big as that—maybe sixty or seventy, I didn't count.

Q. Then the big pool was where?

A. Four or five feet from this corner.

Q. How did the defendant have his shirt as to the sleeves, rolled up, or how?

A. They were rolled up—his outside shirt.

Q. How far?

A. That distance [indicating].

Q. Did he have an undershirt on?

A. Yes, he did.

Q. How was that as to being short or long?

A. It is a short-sleeved shirt.

240 Q. How far up on his arm did the sleeve extend?

A. About where my cuff is now—about that distance.

Q. Did you arrest the defendant?

A. I did.

Q. Bring him up to town?

A. I did.

Q. Did you undress him?

A. I did; I undressed him at the coroner's office on Third south.

Q. Was Dr. Worthington present?

A. I wouldn't say positive.

Q. How were the defendant's hands as to whether you saw blood marks on them or not?

A. His right hand and right sleeve, and right pants leg and right shoe; there was none on his left hand or left sleeve.

Q. Is that the shirt worn by the defendant at that time?

A. Yes, sir; that is the shirt [shirt shown to witness].

Q. You say that right sleeve was rolled up when you went there?

A. Yes, sir.

Q. And the left sleeve rolled up also?

A. Yes, sir.

Q. Were these blood marks on the shirt?

A. Yes, sir; only they were very plain then.

Q. What did these marks have the appearance of as to whether fresh or not?

A. Fresh.

Q. Different from what they are now?

A. Yes, sir.

Q. Was that mark on the left sleeve at that time?

A. I don't know.

Q. But you know these on the right sleeve?

A. Yes, sir.

Q. Was the sleeve rolled above those marks?

A. Yes, sir.

Q. Was that the undershirt he wore [showing shirt]?
A. Yes, sir.
Q. Was that blood mark on that sleeve at the time that is there now?
A. Yes, sir.
241 Q. And you say that was seven or eight inches above the wrist?
A. Just about as high as my shirt is now.
Q. There is a red handkerchief; was that the defendant's?
A. I wouldn't say it was; I don't remember it.
Q. Is that the vest he had on?
A. Yes, sir.
Q. Were these marks on it at that time?
A. Yes, sir. There was a good many people handled those, I want to state here, since they have been in my possession, and there might have been some changes made.
Q. Are these the drawers he had on?
A. Yes; I believe those are the ones.
Q. Were these the pants he wore?
A. Yes, sir.
Q. Were there blood stains on them at that time?
A. There were.
Q. Where?
A. Blood stains on the knee, about that high.
Q. Right leg or left leg?
A. Right leg; about four inches up.
Q. Are you sure it is the right leg?
A. I am sure.
Q. Any on the left one?
A. I am not positive.
Q. These are the pants?
A. Yes, sir.
Q. Any blood on the shoes?
A. One of the shoes had blood on it; that was the right shoe.
Q. Is that the coat he wore?
A. He didn't have any coat on, if I remember right. We put that coat on afterwards; that was not the coat he wore.
Q. Did he say that was not the coat he wore?
A. Yes; he put that on afterwards.
Q. He said that was not the coat he wore?
A. I am not positive whether he had that coat on or not.
242 Q. Are these the shoes he wore?
A. Yes, sir.
Q. What, if anything, did the defendant say his wife said to him after he found her body there?
A. He said he went to pick her up and she hollered "Oh, Charley!"
Q. State to the jury what he said about how he found her.
A. He said he was laying down asleep behind the lunch counter and got up to comply with the calls of nature and come around and come out the south door and went to the east end of the saloon and there found his wife laying dead. I said, How did you get the blood on your clothes in this way? and he said, Found my wife dead, and I am excited, and I picked her up in my arms, and she said, Oh, Charley, when he tried to pick her up.

Q. Were you there the next day? Were any keys taken from the defendant?

A. Yes, sir.

Q. Who took charge of the keys?

A. I turned them over to one of the deputy marshals.

Q. I mean that day when you took them from the defendant, who did you give them to?

A. I kept them a short time and then turned them over to his sister, and she had to give them to the marshal, or Smith had them, and I got them afterwards from Smith.

Q. How long did you keep them, you and your deputy, Montgomery?

A. Not over an hour at first; then I had them a second time.

Q. When did you get them a second time?

A. From Smith, before the coroner's inquest.

Q. Were you there the next day to make an examination of the premises?

A. Yes; I was there several days.

243 Q. Were you there when an axe and stick were found?

A. Yes, sir.

Q. Where were they found?

A. In the brewery.

Q. Have you them here with you?

A. No, sir; Montgomery found them.

Q. Were you with him when he found them?

A. Yes, sir.

Q. In what part of the brewery were they found?

A. You go in the north door and turn to your right, where there is a door or place for a door, and right around a corner to the right, against the north wall of the brewery, after going in along this short partition.

Q. You go in the big open door of the brewery and this room is right to your right hand?

A. Yes, sir.

Q. Opens out?

A. I wouldn't say.

Q. Stood at the corner of the entrance?

A. Right around to the right again.

Q. State whether that stick and axe had any blood marks upon them?

A. Yes, sir.

Q. Now, had they the appearance of being recent blood marks?

A. Yes, sir.

Q. Was there any blood marks on any part of the building near there, close to where they were put?

A. There was; on a 2 x 4 or 4 x 4 upright portion of the building, as if a man had put this portion of his hand up against it, as if standing somet'ing in the corner.

Q. Why do you say it was the hand?

A. Because it showed the fibers—I don't know what you call it in a man's hand—the creases.

Q. Did that appear to have been recently made?

A. It did.

244 Q. Did you enter the brewery by the large double door?

A. Yes, sir.
Q. State whether there were any blood marks on that door or not.
A. There was.
Q. What part of the *door*?
A. On the west side of the opening. I think it is a double door, if I remember right, fastened by a big clasp.
Q. What appearance did the blood mark have?
A. Appearance of a man's hand in that shape.
Q. As if laid against the door?
A. Yes, sir.
Q. Whose brewery was that; who was in possession of it?
A. I had been lead to believe it belonged to Mr. Thiede.
Q. Did the keys taken from Thiede open the doors in there?
A. I am not positive.
Q. Montgomery did that?
A. I think he did.

Cross-examination by Judge CHERRY:

Q. When did you receive the telephone message?
A. Five minutes to four o'clock in the morning.
Q. Where were you?
A. Asleep in bed.
Q. Where had you been the evening before?
A. At Murray and over to the smelter where the army was located.
Q. What was the occasion of your going to Murray?
A. Because the railroad people were bothering me and wanting me to arrest these people and protect their property, and I went down to see if they were going to do any harm, and stayed till after 11.
Q. Didn't you stay later?
A. I think I got back to Hogle's saloon at 20 minutes after 12.
245 Q. In Salt Lake City?
A. Yes, sir.
Q. The first place you struck was Hogle's saloon?
A. Yes, sir. General Carter was with us and he wanted to go there.
Q. What was the wording of the message you received?
A. My night man received it and come and waked me up.
Q. You didn't get the message?
A. I got it in that way.
Q. How did you go down there?
A. I got up as quick as I could and went to McCoy's stable and got a horse and buggy and drove down as quick as I could.
Q. Who did you take with you?
A. John Montgomery.
Q. Did you see any persons around the saloon when you drove up to it?
A. Yes, sir.
Q. Did you know who they were?
A. I saw Mr. Thiede, the first one I saw.
Q. No one else?
A. After I hitched my horse I saw Wiler.
Q. After you first got there who was the one you saw?
A. Thiede.

Q. Where was he standing?
A. At the south door.
Q. Where were you?
A. In the buggy.
Q. Whereabouts?
A. I turned in from the county road, as I call it—I don't know whether that is the road or not—to the lane that leads down by Thiede's saloon.
Q. Where did you hitch your buggy?
A. To the corner of the fence that surrounds his dwelling.
Q. You drove there?
A. Yes, sir.
Q. Did you hitch the team?
A. Yes, sir.
Q. Where was Montgomery at that time?
A. Montgomery and I hitched the team and Montgomery walked in ahead and walked past, and I walked to the end of the bar.
246 Q. He walked in the same door?
A. Yes, sir.
Q. The west door?
A. The west door.
Q. Both walked in there and Montgomery ahead of you?
A. Yes.
Q. As you walked up Thiede was standing there?
A. Behind the bar.
Q. Where did you first stop?
A. Right at the end, within one and a half feet of the bar.
Q. Didn't you speak to anyone in there?
A. Never said a word.
Q. Isn't it a fact you said, what's up here?
A. No, sir; I didn't. I was waiting to see what he would say, because he didn't holler at me; he didn't bow, or anything.
Q. He was standing in the door when you went by the door?
A. In the south door.
Q. I thought you said as soon as you saw him he turned and went into the saloon?
A. I saw him at the door; I was driving rapidly and I got in a little west before I saw him in the door.
Q. You said as soon as you drove down he turned and walked away?
A. He did.
Q. Was that when you passed the door; he was not standing in the door when you passed?
A. No, sir.
Q. He turned and walked back?
A. He turned and went into the saloon.
Q. When you came in there and stood behind the door and he was standing there taking a drink?
A. Yes, sir.
Q. Nothing was said?
A. Not a word.
Q. Did he finish taking his drink?
A. Yes, sir.

247 Q. You didn't say anything to him, nor he to you?
A. No, sir.
Q. Where did he go?
A. He come out by the end of the bar, and as he passed by me he had to crowd close to me to get by. He partly turned around and said, I killed my wife last night, and I said, It looks that way.
Q. That was the first thing you said?
A. Yes, sir.
Q. Will you swear positively he said, I killed my wife?
A. That is the way I understood him.
Q. Does he speak the English language plainly; you know him well, don't you?
A. I know him off and on for two years; I can't tell exactly, I am not well acquainted with the man.
Q. You heard him talk often?
A. Yes, sir.
Q. Don't you know, as a matter of fact, that he speaks the English language brokenly?
A. Not very; he speaks it brokenly.
Q. You could very easily tell he was a German by his accent?
A. Some foreigner.
Q. You would not know whether he was a German or not?
A. I couldn't tell whether he was a German, Swede, or Dane by his accent.
Q. You couldn't?
A. No, sir.
Q. You said, It looks that way; what did he say?
A. He said, I didn't do it; they done it.
Q. Would you swear to this jury he didn't say that in the first instance?
A. He didn't.
Q. Will you swear he didn't?
A. I do swear.
Q. Might he not have said, They killed my wife?
A. I am telling you as I understood it.
248 Q. Who else was in the room when you went in?
A. Montgomery, and I think this man Weiler, a butcher, come in there about that time.
Q. Wasn't Farrabee in there?
A. I wouldn't say positively as he was.
Q. You don't remember whether he was there or not?
A. No, sir; I don't.
Q. I will ask if Albert Cahoon wasn't there?
A. Yes, sir; but he was not in the saloon.
Q. Will you swear to that?
A. Not till afterwards.
Q. When you went in, who did you look at?
A. I eyed Thiede.
Q. You kept your eye on him?
A. Yes, sir.
Q. You were not paying attention to who was in there?
A. No.

Q. As a matter of fact, wasn't Mr. Ahlburg in there?
A. I don't know him; I may know him when I see him.
Q. That works for Harry Haynes; clerks in his store?
A. No, sir; I know him now.
Q. Wasn't he in the saloon?
A. I don't believe he was; he might have been.
Q. You didn't look around to see and take notice who was in there when you first entered?
A. No, sir; I didn't.
Q. Was there any other person around there besides those I have mentioned to you?
A. In a few minutes there were lots of them around there.
Q. But I mean at the time when you went in, was there any around the premises about the south door or standing out in that little street on either side of the saloon on the south or west?
A. How's that?
249 Q. Was there any person standing on the south or west of the saloon when you hitched your buggy, and got out and walked into the saloon?
A. Not that I remember of.
Q. You didn't pay much attention to who was there; you were after Thiede, weren't you?
A. No, sir; I was after to find out who done the killing, and I was going to watch Thiede first.
Q. And had you received no impression as to who was guilty before you got there?
A. No, sir.
Q. Hadn't any suspicion in your mind until you arrived there?
A. No, sir.
Q. Is that all Thiede said to you when you said, It looked that way that you killed your wife?
A. That's all. He said, I didn't do it; they done it.
Q. Didn't he say, You must be crazy to talk that way?
A. He said lots to me afterwards, after I tied him.
Q. In the saloon?
A. That's what he said, and I said, I put you under arrest, and he said I had no right to arrest him, and I said, I will arrest you anyhow.
Q. That was in the saloon?
A. That was outside.
Q. Did he walk outside immediately?
A. Yes, sir; then he wanted to go back, and I wouldn't let him. He said there were people going in the saloon and he didn't want them in there; nobody had any right on his premises.
Q. You didn't let him go back in the saloon?
A. No, sir; I didn't.
Q. Didn't you take hold of him in the saloon?
A. I just simply said, I put you under arrest, and when he said I could not, I did.
250 Q. I will ask you if you didn't say to him, You son of a bitch, you killed your wife; if you don't confess I'll kill you?
A. I never said no such thing to him; I told him I believed he did it.

Q. Didn't you say to him, You murdered your wife, and you might as well confess, you son of a bitch?

A. I never said it to this day; I told him I believed he was the man that did it.

Q. Didn't you call him a son of a bitch at that time?

A. Yes.

Q. Didn't you take him and knock him down?

A. I struck him and kicked him, too, because he wouldn't mind me and said I couldn't arrest him, and nobody had a right to go on his premises.

Q. After he was tied?

A. No, sir; no man ever seen me strike a man tied.

Q. I am asking you whether you did or not?

A. No, sir; I did not.

Q. Did you have any liquor as you went down there?

A. No, sir; I didn't.

Q. Didn't drink any that evening?

A. No, sir.

Q. Did you drink any liquor when you came back?

A. No, sir; because I wasn't drinking any at that time. It is seldom I do drink, but when I want a drink I go and get it.

Q. Had you been in Haynes' saloon that evening when you were down at Murray? The evening before?

A. I wouldn't say positively.

Q. I will ask you if you didn't take drinks in there.

A. I didn't leave here till after dark quite a while. I wouldn't
251 say positively; I might have had a glass of beer or lemonade.

Q. You didn't drink liquor?

A. No, sir; I never took three drinks of whiskey in the house in my life.

Q. In the house?

A. In the town of Murray.

Q. I will ask you if Thiede didn't ask you to take him down to the house to see what might be found there?

A. When?

Q. At the time you arrested him that morning. After you brought him outside?

A. No, sir; he didn't, and he made an awful kick because we went in.

Q. Didn't he say, Let's go down to the house?

A. No, sir; he never did.

Q. And see what can be found there?

A. No, sir.

Q. Didn't he ask you to take him to Burgatown to see if you could find those two boys?

A. He said, Here is these two men that might have killed her, and I said, March out and we can go and see.

Q. Did you go up there?

A. Yes, sir.

Q. Didn't you go part way and then come back?

A. No, sir; we were up there—a good while, too—and we hunted till we found them.

Q. Was Thiede with you?

A. Yes, sir; I kept him right ahead of me.
Q. Did you find the two men there?
A. Yes, sir.
Q. Did you talk with him there in his presence?
A. Yes, sir; they both came out of a lodging house there.
Q. Did you say he objected to people coming around there?
A. He did.
252 Q. Who was it coming around?
A. I don't know; they were strangers; after we were there a while the whole country commenced coming around.
Q. And he asked you to keep them from going into the premises, did he?
A. He said he wanted to keep them out; they had no right there, and I said, They have, and you are not going to get in.
Q. Where?
A. Back into the saloon.
Q. How about the brewery?
A. He said he didn't want people there smoking his cigars and drinking his whiskey, and I told him his cigars and whiskey were all right.
Q. When did you go into that brewery?
A. We went in in the afternoon, after I had brought him up here, or early the next morning.
Q. Who went with you?
A. John Montgomery.
Q. Were the doors unlocked?
A. When I was in they were.
Q. Were they unlocked in the morning when you first got there?
A. I couldn't say.
Q. You didn't notice?
A. They might have been open for all I know.
Q. Did you look around for blood stains at that time?
A. Yes.
Q. Did you find the blood stains on the door of the brewery at that time?
A. Yes, sir.
Q. That was the morning you arrested him?
A. I am not certain. I think it was in the afternoon; we went down the next afternoon or morning.
Q. After you made your second trip you saw the blood stains? Did you look for blood stains that morning?
253 A. Yes, sir; for blood stains and knives and different things.
Q. Did you find them that next morning?
A. Yes, sir; on the door.
Q. At that time?
A. Yes, sir.
Q. Couldn't you tell whether the brewery was closed?
A. We found the blood stains on the saloon door.
Q. Did you find them on the brewery door?
A. I didn't. We found the axe afterwards in the brewery.
Q. Did you look for clood stains on the ground that morning?
A. Yes, sir.

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A. We found the blood stains on the saloon door.
Q. Did you find them on the brewery door?
A. I didn't. We found the axe afterwards in the brewery.
Q. Did you look for blood stains on the ground that morning?
A. Yes, sir.

Q. And you say you found blood stains away east of the place where the body was found?

A. Not away east. I think 41 feet, if I remember right. I measured it.

Q. What was the nature of those stains?

A. Drops of blood of that size; some bigger, like a big drop had dropped down and then spattered out.

Q. And where the body was supposed to be lying there was a large pool of blood?

A. Yes, sir.

Q. You didn't see the body while laying there?

A. No, sir.

Q. Was there any evidence of a struggle where these drops of blood were seen?

A. Yes; a round circle five or six feet and well tracked down.

Q. Was it tracked clear down to where the body was supposed to lay?

A. It was not.

Q. Wasn't no scuffling down there?

A. Very little; a very few tracks.

Q. What was the nature of the ground?

A. I would call it a soft alkali ground of grayish nature, ash color.

254 Q. So that the impression was easily made with a foot-step?

A. Yes, sir.

Q. Was that true right near the corner of the saloon where the body was supposed to be?

A. It is harder there than 41 feet from the saloon. It is a good bit harder right close to the saloon.

Q. Did anyone go with you to look at these blood stains?

A. There were lots of them there.

Q. Who?

A. Weiler was there, and Montgomery, and Cahoon, and many strangers.

Q. Was Farrabee there?

A. Farrabee was there, but just what time I don't know.

Q. When you were looking for blood stains?

A. Yes, sir; at one time, but which time I don't know.

Q. You say you found little spots of blood on the saloon door?

A. Yes, sir; on the south door.

Q. How high up from the ground; about what part of the door?

A. The highest one I think was five feet, approximately.

Q. Did you see any on the side of the building anywhere?

A. I think they were all on the door. There might have been one on the west door jamb.

Q. You mean the door jamb on the west side of the door?

A. Yes, sir.

Q. Did you call the attention of any of those present to that; was the attention directed to those spots?

A. Yes, sir; I counted them.

Q. And also on the ground?

A. Yes, sir.

255 Q. Was there any blood stains between the door and the place where the body was supposed to lie on the ground?

A. They didn't run from the south door to where the body lay, but out to where the scuffle took place.

Q. Out there?

A. Yes, sir.

Q. How many did you see on the ground?

A. As many as seven or eight from the door to where this round ring was tred down and where there was a whole lot of them.

Q. How many were there?

A. Seven or eight.

Q. Where that round ring was how many were there there?

A. I didn't count them; there might have been 100 or 120; there was a whole lot of them.

Q. What is your best judgment?

A. I don't think that is a fair question; it is hard to tell how many beans there are in a sack.

Q. That would depend upon the size of the sack, wouldn't it?

A. Yes, sir.

Q. Was there as many spots there as there would be beans in a sack; can you give an estimate? I want you to give an intelligent description of this.

A. I will say there was over fifty anyhow.

Q. Separate, distinct spots on the surface of the ground?

A. Yes, sir.

Q. Was there any leading from there to where the body was supposed to lay?

A. Two drops was all I see from there to where the body lay.

Q. When you went into the brewery the next day where you
256 found the axe and stick, the saloon was unlocked, I understand you to say, and you opened the door and went in; the brewery I mean?

A. I didn't unlock it.

Q. Did Montgomery?

A. I am not positive which it was.

Q. One of you did?

A. No, sir; it might have been opened by others; Smith had the key; how we got into the brewery I don't know.

Q. Did you have possession of the keys at that time?

A. I gave them up.

Q. You gave them up before then?

A. Yes, sir.

Q. Was that inner door closed?

A. I am not positive of that, whether it was open or not; I don't know which way it did open.

Q. Where did you go first to look when you went in there?

A. We went in to look for a basin that he was supposed to have washed his hands in and for a knife he was supposed to have killed her with. Montgomery and I looked into a tank and he said, see what I find here; and here was the axe.

Q. I am asking you which way you went?

A. South, into the brewery.

Q. Your attention was called to this stick business by Montgomery?

A. Yes, sir.
Q. Did you go over into that room?
A. Yes, sir; and all through it.
Q. You had a lamp?
A. No, sir.
Q. Went without a light of any kind?
A. Yes; we got a candle afterwards.
Q. You saw blood stains on that 2 x 4 as you call it?
A. 2 x 4 or 4 x 4, I don't remember which.
257 Q. Isn't it a 2 x 10?
A. It might be; I don't believe it is. I will drive down and see if you want me to.
Q. It is a piece of unsized lumber?
A. I think it is one of the supports of the building this partition is fastened to.
Q. Isn't it part of the door frame?
A. It might be; that is the first thing in making a door frame.
Q. Didn't you notice it particularly?
A. I had no occasion to notice it particularly.
Q. And you were in there looking at those things and for those things and had no occasion to notice it after you found it?
A. You might as well ask me if I noticed the shingle nails in the roof.
Q. Whereabouts were the blood stains?
A. I forget the exact height it was, but it would be about breast high.
Q. Could you tell if it was the hand of a person by the blood stains?
A. It had that appearance.
Q. Could you see the grain, the imprint of the hand on that rough board?
A. Yes, sir.
Q. Wasn't the board rough?
A. Yes, sir.
Q. It was not planed?
A. No, sir.
Q. Wasn't it whitewashed?
A. I think it had been, but it was very dim, you know; I am satisfied now it had been whitewashed.
Q. Wasn't there a large nail just above that blood stain about 15 inches?
A. I couldn't say.
Q. You didn't notice that?
A. No, sir.
Q. Did you notice whether there were two shelves immediately
258 north of the building?
A. No, sir.
Q. Did you see Montgomery when he picked the axe up?
A. Yes. He said, look here and see what I find here.
Q. You didn't see him pick them up?
A. I see him pull them out that way.
Q. He called you and you stepped in?
A. I didn't step in; I turned back. I was four feet from him; not over.

Q. They were standing up, were they?
A. In that shape, in the corner.
Q. Did you see them before he took hold of them?
A. No, sir.
Q. Is that right?
A. Yes, sir; that is right.
Q. Do you think you would recognize that blood stain and stick if you would see it?
A. No, sir.
Q. You would recognize it?
A. I might.
Q. You say you got a candle afterwards?
A. Yes, sir.
Q. Did you go in there again?
A. Yes, sir.
Q. What did you look at?
A. We looked at every tub and everything in there that we could get to the bottom of; all through it; turned everything over.
Q. Did you look at that blood stain again?
A. Yes, sir; I know we did, but it was two or three days afterwards.
Q. Did you have a candle then?
A. I am not certain; I don't think it needs any candle when the door is open.
Q. You could see the grain of a man's hand without a candle in that room, the print would show so plain?
A. The grain of a man's hand—it showed it was made with something that had a cleavage to it; it was the striation marks between a man's hand.
259 Q. Look at that piece of timber; state if that resembles the piece of timber and stain you testified about.
A. That resembles it.
Q. That is it, is it?
A. I think it is.
Q. Look at that and see if you can find anything that looks like the creases of a hand?
A. It has been a long time now.
Q. Look and see if you can see them?
A. Men have put their hands against it, and it could be all smoothed over.
Q. I am asking you to say if you can see anything that looks like the print of a man's hand on there?
A. This has been changed since I seen it, but this is the stick. There has been something put above here that run down over it. That white-wash was not over that way when I examined it.
Q. What was not over it?
A. This white mark that runs down here.
Q. It has been scratched off, has it?
A. I don't say it has been scratched off; I don't know what it is. I say it is not scratched.
Q. Could you see the grain of a man's hand?
A. I don't say I did.

Q. Can you do it?

A. I don't 'no', sir; I told you I didn't say so.

Q. What is the last time you have been down there to look at the appearance of the marks and stains?

A. If my memory serves me right, I was down there last Wednesday morning.

Q. Did you look at the stains on either of these places then?

A. No, sir.

260 Q. Did you look at that one on the door?

A. I didn't.

Q. Have you ever seen that since the first time you noticed it? The stain on the door of the bresery?

A. Yes, sir; I did.

Q. How often did you notice that?

A. Four or five times afterwards.

Q. Did it have the same appearance each time?

A. No, sir; and now it hardly shows anything, if there is any sign of blood on it at all.

Q. That is, you judged those were blood stains you saw on the door; they had that appearance?

A. They had the appearance of blood, and I was satisfied.

Q. You made no special examination, only just looked at it?

A. As much as if I cut my own finger and saw the blood drop and I would say it was blood.

Q. You simply passed an opinion in your mind that was a blood stain; you made no examination to find out if it was blood?

A. I didn't.

Q. Neither did you of the one on the inside of the brewery?

A. No, sir.

Q. You just judged it was blood from its appearance?

That is right.

Q. You have manifested considerable feeling and interest in this case, have you not, since it has happened?

A. No, sir; only my duty as an officer.

Q. That is all, was it?

A. That is all.

Q. I will ask you if you didn't state in Murray, about the time you made the second trip down there, in the presence of some parties

261 around Harry Haynes' store, Mr. Ahlburg and another clerk of Harry Haynes, in his store, words to this effect: That you wished the son of a bitch had undertook to run, so that you could have shot him and ended this case?

A. I never did.

Q. Didn't you also state to some parties there on the same occasion——

A. I don't use that kind of language to start in on, only when I am mad. I used it to him because he was deserving of it.

Q. You did call it to him?

A. Yes, sir; because he got mean with me and talked mean with me.

Q. I will ask you if you didn't state after that, to some of the same parties, you believed you arrested the wrong man, but as you had started it you were going to prosecute him and do your best to convict him?

A. I never did. I don't get a cent for prosecuting this case.

Q. Did the stain on the brewery door look any more like a man's hand than the stain on this stick on the inside; did the stain on the outside of the brewery door resemble the stain on a man's hand any more distinctly than the one did on the inside where the axe and stick was found?

A. On the outside had just about the same appearance, only a little broader, and the top of one or two fingers up above it.

Judge CHERRY offers stick in evidence.

Q. I will ask you if you stopped any place in Murray before you went down to the Thiede place?

A. Yes, sir.

Q. Where did you stop?

A. In Haynes' saloon or store—I am not certain which—to inquire for Albert Cahoon, and he came out of the store or saloon—I don't
262 know which—and I said, Albert, where did this take place? And he said, over at Thiede's place.

Q. I am askin' where you stopped.

A. Between the store and saloon; just stopped my horse.

Q. When you drove around, you drove around by the smelters to the first turn south of Murray and then turned by the smelters and then north and then went down the hill and came in from the south to Thiede's place?

A. Yes, sir.

Q. Is that the only place you stopped?

A. That is the only place.

Q. Don't you know where Thiede's place was?

A. Yes, sir; but I didn't know where the woman was killed.

Q. You had been there a few days before, hadn't you?

A. I wanted to find out where the woman was killed.

Q. Did Cahoon tell you?

A. Yes, sir.

Q. Had he been over there?

A. He said he had.

Q. What Cahoon was that?

A. His name is Albert Cahoon, a deputy sheriff of mine. He may have two names; I don't know.

Q. You talked with him over there before you got to Thiede's?

A. Yes, sir.

Q. Did he go over with you?

A. He had his own horse.

Q. Did he go over with you at the time you went; did he ride back with you?

A. No, sir.

Q. He was not there, then, when you got there?

A. Where?

Q. At Thiede's place.

A. He got there a minute or two after I did, because I drove faster than he did.

Q. He followed right along over with you?

A. Yes, sir.

263 Redirect examination by Judge HOWAT:

Q. State whether you made an examination for footprints or tracks to the creek.

A. Not to amount to anything that I would swear to; you could see lots of tracks; there had been a good many around there.

Q. What was the condition of the creek as to the quantity of water in it at that time?

A. It was running strong and stout.

Q. You went down last Wednesday or Thursday?

A. I don't know whether Wednesday or Thursday.

Q. You took me down?

A. In the morning.

Q. I asked you to take me down to see the place?

A. Yes, sir.

Q. At that time was the brewery door locked?

A. Yes, sir.

Q. So that we could not get into it at that time?

A. Yes, sir.

Q. You didn't see this mark on the stick at that time?

A. I didn't.

Q. When was the last time you saw that mark on the stick?

A. I can not say; it might be three or four or five days after the homocide occurred down there.

Q. Have you seen it since that time?

A. No, sir.

Q. Have you taken possession of the premises there and kept possession of them since that time?

A. No, sir; the marshal took it.

Q. Who is in possession of it now?

A. I don't know who.

Q. You are not?

A. No, sir.

Q. Is there any officer in possession of it to your knowledge?

A. Not that I know of.

264 Q. You say you stopped opposite the saloon or store of Harry Haynes?

A. Yes, sir.

Q. What was the purpose of stopping there?

A. To find out about this murder; that is what they telephoned me or my man; said there was a murder committed.

Q. You didn't know it had taken place at Thiede's saloon?

A. I didn't know who was killed till I got there and found out.

Q. And had no intimation as to who killed her?

A. No, sir.

Q. So that you didn't go there with any impression that Thiede had murdered anybody?

A. No, sir.

Q. Now, you say you understood Thiede to say he killed her?

A. Yes, sir.

Q. Is your hearing good?

A. Yes, sir; good.

Q. Is that what he said?
A. That is as I understood him.
Q. Have you any doubt about it?
A. No, sir.

Cross-examination by Judge CHERRY:

Q. You might be mistaken; might have misunderstood him, might you not?
A. I don't deny that.
Q. You say you didn't know who had been killed?
A. No, sir.
Q. Didn't the telephone message inform you?
A. Murder committed at Murray, said my night man, and I didn't even put on a collar.
Q. That is all the information you received?
A. That is all.
Q. You say the brewery went into the possession of the United States marshal soon after that?
A. I wouldn't say whether he took the brewery or not; he took the saloon and the premises, but whether he took the brewery I won't
265 say; I had nothing to do with that.
Q. You knew he had possession of the premises generally down there afterwards?
A. Yes, sir.
Q. Exercising control and possession?
A. Yes, sir.
Q. Do you know by what authority he held possession; did you ever find out?
A. Some civil papers, as I understood.
Q. Do you know of your own knowledge whether it was an attachment or not?
A. I don't know whether an attachment or a levy.
Q. But you understood he was holding possession under some sort of a writ?
A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. How long he held it you don't know?
A. No, sir.

Judge HOWAT. I offer in evidence shoes worn by defendant, overshirt, drawers, pants, vest, undershirt, and coat that I have identified.

Judge CHERRY. No objections.

Q. State whether that mark has the appearance now as when you saw it.
A. It is duller and deader; it has not the fresh appearance now.

Cross:

The general outline is the same?
A. Yes, sir.

Redirect:

You said some white substance had been over it; what is that?
A. I think it is candle grease that has run over it.

Q. You say you put your hand on it; what was the purpose of that?
A. To see how it would fit.
Q. Did other parties do the same thing?
A. Yes, sir.
266 Q. When was that?
A. Two or three days afterwards.

Cross-examination:

Q. You put your hand on it?
A. Yes, sir.
Q. And other parties did?
A. Yes, sir; we examined it.
Q. You don't remember whether you had a light in there?
A. We did have a light.
Q. Awhile ago you said you didn't remember whether you had a light or not?
A. I said when we first went in.
Q. But afterwards I asked you and you said you didn't remember?
A. I said we got a light afterwards.
Q. Did you put your hand on there when you first went in to experiment with it?
A. I can not tell just when, because we were searching for evidence of who committed the crime.

267 Dr. JOSEPH S. RICHARDS, witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. What is your name?
A. Joseph S. Richards.
Q. How long have you practiced your profession in Salt Lake City?
A. Over 19 years.
Q. Did you see the dead body of Mrs. Thiede, wife of the defendant?
A. I did.
Q. What time?
A. On the third day of May last.
Q. Did you make an examination?
A. I did.
Q. In connection with other physicians; if so, whom?
A. Drs. Benedict and Worthington.
Q. Did you keep a memorandum of what you saw?
A. I did.
Q. Did you examine the wound in the throat?
A. I did.
Q. State to the jury the nature of the wound and extent of it.
A. The wound extended from about two inches below the lobe of the left ear and around 2½ inches below the lobe of the right ear, extending across. It passed downwards, forwards, and then transversely across, cutting all the soft structures in front of the vertebral column.
Q. How deep was it?
A. To the vertebral column, to the backbone, and into it.
Q. Into the backbone?
A. A quarter or half an inch into the vertebral substance that separates the different vertebræ.

Q. How deep was it from the outside surface in front?
A. That would be impossible to say; probably two inches.
Q. State whether the jugular vein on either side had been severed.
A. The superficial jugular veins were not severed, but the deep one was on the left side.
68 Q. State whether the windpipe was severed.
A. No, sir; it was above the trachea through the larynx; the windpipe is below; it was not the trachea, but the larynx that was severed.
Q. What is above the windpipe?
A. Just above the windpipe; just above that bone.
Q. But it is the same?
A. It is; the larynx is the upper portion of the breathing apparatus.
Q. It is the breathing apparatus?
A. Yes, sir.
Q. It is not the windpipe, because it is a little higher?
A. Yes, sir.
Q. What was the cause of her death?
A. Hemorrhage, undoubtedly.
Q. From that wound or injury?
A. Yes, sir.
Q. Would this woman, after receiving this wound, be able to articulate?
A. No, sir.
Q. Was it possible?
A. No, sir.
Q. So that she couldn't speak?
A. She couldn't speak.
Q. Can you state whether that was inflicted with a sharp instrument?
A. I should think so.
Q. Can you state whether it could be inflicted with a common pocket-knife, or whether that is possible?
A. I would not think it probable.
Q. Wouldn't be possible to inflict it with an ordinary pocketknife?
A. As to that I couldn't state.
Q. You would not expect it to be?
A. No, sir.
Q. State whether that wound could be inflicted with a razor.
A. I would think not.
Q. Do you think it might be inflicted with a large knife with a handle to it?
A. Yes, sir; I would.
269 Q. State your reasons why it couldn't be inflicted with a pocket-knife or razor?
A. Because it was a notched wound; on the upper border there was a notch and below there was one, and another on the under border, as though it had been done with a sawing motion. That was the impression I got from looking at the wound.
Q. You didn't see the defendant's clothing or person when he was brought before the coroner at all?
A. No, sir.
Q. You just examined the dead body at this time?
A. That's all.

Cross-examination by Judge CHERRY:

Q. Did you examine the body to see whether there had been any rape or attempted outrage?

A. No, sir; I didn't.

Q. Didn't make any examination of that kind?

A. No, sir.

Q. Isn't it a fact you can ascertain the time a person has lived after partaking of food, knowing the time the food was taken into the stomach, to a reasonable certainty?

A. I believe there is a method by which it can be done, assuming that you know what time the food was taken into the stomach.

Q. You have the time given when they took the food?

A. I believe there are methods, but I do not understand them.

Q. There was no such examination made?

A. There was no such examination made.

Q. Have you stated all the wounds you observed on the person of the deceased?

A. No, sir; I have not.

Q. Did you see any wounds on the hand?

A. Yes, sir.

Q. Which hand?

A. On the right hand near the web of the thumb; it was a
270 small wound and didn't hardly amount to a wound; it was just through the skin; not a deep wound at all.

Q. Was it on the back of the hand?

A. It was on the back of the hand from the web; it might have run through that way across, but it was just a short wound about one inch long.

Q. Was it lateral with the bone or cross wise?

A. Parallel with the thumb in that direction.

Q. Any on the left hand?

A. Several scratches on the left hand.

Q. Any cuts?

A. No cuts, just little scratches, scarcely through the skin.

Q. You made a careful examination?

A. Yes, sir; and noted everything I saw.

Q. Who was with you when you made the examination?

A. Dr. Benedict and Worthington.

Q. Made at the same time; you were all present?

A. Yes, sir; they were present.

Q. Now, you say that in your opinion that wound was inflicted with a large knife?

A. I would think so; yes, sir.

Q. How large a knife?

A. Large enough to make a backward and forward movement without the knife leaving the throat.

Q. Couldn't it be made with two strokes? As I understand it, there was one large cut, running from the right side toward the left, about $1\frac{1}{2}$ or 2 inches below the ear, commencing and running clear around the throat to the left ear, and then there was apparently a cut into the main wound on one side; and was there more than one?

A. There were three notches to the main wound. The skin was notched in three places, two on the left side and one on the right.

271 Q. Couldn't those wounds have been made by slighter cuts in the first place, and one deep cut made afterwards?

A. I think not.

Q. It could not have been done that way?

A. No, sir; I don't think so.

Q. Did you hear Dr. Benedict's testimony?

A. Not that part.

Q. Could it have been made by making the large wound first and the slighter cuts afterwards?

A. My judgment would be it could not be done that way.

Q. I will ask you what reason can you give that it could not be done that way?

A. For the reason the cut was a continuous one. If it had been two strokes you would not have struck the bottom of the one perfectly and made an incission clear through. If the knife had never left the hand it would have made a clean straight cut.

Q. If it was a long knife it would not have been apt to make notches on both sides; the point of a long knife would not be apt to come back as quick as a shorter one?

A. It is possible those notches were made with a single stroke. If it would catch the skin it would make a notch that way, leaving the throat. That is possible, but not probable.

Q. Do you pretend to say you can tell the length of the knife?

A. No, sir.

Q. Can you approximate it?

A. No, sir.

Q. It might have been a knife with a blade four or five inches long?

A. I would say it was possible to do it. It might be possible with a shorter knife than that.

272 Q. Isn't it possible to make all those cuts with a razor?

A. All things are possible. It might be possible.

Q. I will ask you if there would not be a large flow of blood following the knife from the wound?

A. Yes, sir.

Q. Which would fly in various directions with some force?

A. Yes, sir.

Q. And it would stain the arm and the hand and clothing of the one who did it, to a large extent?

A. If in front; yes, sir.

Q. If their arm was in front?

A. Not if it was made with a single sweep.

Q. If they did any sawing?

A. It would depend upon the size of the arm. The main artery on the left side was cut, but the main artery on the right side was not severed at all.

Q. Can you tell from the looks of the wound where the person who committed it stood?

A. I can not.

Q. You would not pretend to express an opinion as to that?

A. No, sir; I would not.

Q. He may have stood on either side or behind?

A. It is probable he stood on one side or behind. I wouldn't think it would be in front.

Q. If he stood on her right side and reached across and made a cut, and then sawed back and forth after making the cut, what would be the probable result as to the flow of blood?

A. If he had a long-handled instrument it would be very slight.

Q. What would be the result if he did the sawing back and forth there?

A. I have answered it as well as I can.

273 Q. You can not answer it better?

A. No, sir.

Q. What would be the result if he had an ordinary butcher knife with a blade five, six, or seven inches long?

A. I see no reason why his clothing——

Q. And if the person was struggling and resisting at the time?

A. O, well, that depends upon circumstances.

Q. What would be the probability?

A. He would get some blood on him.

Q. Is it not probable he would get a great deal of blood on him?

A. Yes, sir.

Q. You say a person could not articulate after receiving that wound. I will ask you if a body on being moved, would it be likely or probable that a noise of any kind would proceed from the cadaver after being suddenly or violently moved?

A. A small hissing noise might as the air passed between the vocal cords.

Q. As I understand it, the organ above the trachea——

A. The cut was above the vocal cords.

Q. Wouldn't the air passing out of the cut, if there was a blood clot or blood film formed there, would it make any noise passing out?

A. No more than a gurgle or hissing sound; that is all that could have been heard.

Q. It is not uncommon for sounds to proceed from handling a cadaver?

A. You can get sounds.

Q. And especially would that be true where the breathing organ was severed where the air could pass out of the aperture?

A. Just as I say; a gurgle or hissing sound would be all that you would get from it.

274 Q. Did you ever have any experience in handling a dead person soon after they were killed by a wound in the throat or neck?

A. No, sir; I think not.

Q. You are only giving that as your opinion; you have no practical experience?

A. I have had cases where the throat was severed in that way, and they have tried to make noises they could not make.

Q. I mean after the person was dead?

A. No, sir.

Q. A sudden turning or lifting, would it expel the reserve air and produce a sound?

A. It might do that.

Q. Have you ever had any experience in such cases?

A. No, sir.

Q. But from your knowledge of your profession and of anatomy, physiology of the human structure, you say that would be very likely to occur in such a condition as I have mentioned?

A. Just as I say, a gurgling or hissing sound.

Redirect examination:

Q. If the person who inflicted this wound stood behind her and reached around with a large knife and severed this jugular vein on the left side, would he be likely to receive much blood upon him?

A. I would say not.

Q. If a person threw her upon the ground and was at her right side and reached over and cut her the way you describe, would he be likely to get much blood upon him?

A. I should think he would get considerable from such a wound.

Q. Would he?

A. He would probably get considerable blood.

Q. But standing from behind and reaching around he would not?

A. No, sir.

275 WILLIAM MCQUEEN recalled by Judge Howat.

Q. In talking to the defendant at this time what did you say to him about a knife, if anything?

A. That was after he came to the jail. I asked him what became of a long knife there was with a brown handle and he said, It ought to be there in my house, and I said, I looked for it, but it wasn't there, and he said, It ought to be there.

Q. What is it used for?

A. Used for a bread knife; it is about that long. I seen the knife there that day I had lunch there.

Q. Did you inquire for that knife?

A. Yes, sir; and he asked me to go and look for it.

Q. Where was the knife?

A. On the lunch counter.

Q. When you asked what became of it what did he say?

A. He said it ought to be there, and wanted me to look for it.

Q. Did you ever look for it?

A. Yes, sir.

Q. Ever find it?

A. No, sir.

Q. What was the description of the knife?

A. It is a long knife, with a blade probably 14, 13 or 14 inches long, and a handle say 4 or 5 inches, a brown or mahogany colored handle, one side black.

Q. What was the blade as to being sharp?

A. I won't say.

Q. What did you see him using it for?

A. Cutting bread; he gave me a lunch one day.

Q. When did you look for that knife?

A. The first day we were down there.

Q. Did you look for it again?

A. I went down there after he asked me to a purpose to come
276 and look good, and I would find it.

Q. Did you find it?

A. No, sir.

Q. Did you make a thorough examination?

A. Yes, sir.

Q. You were never able to find that knife?

A. No, sir.

Cross-examination by Judge CHERRY:

Q. When did you see that knife?

A. I can't say; the last time I was there before she was killed.

Q. How long before that was it?

A. I can not say.

Q. Can you approximate?

A. It might be a week or two weeks; I can't say exactly.

Q. How did you come to go in there?

A. I was down there looking for some fellows that stole a buggy and harness.

Q. How did you come to go into the saloon?

A. I went over to see who was there.

Q. How long were you in the saloon on that occasion?

A. I might have been there thirty minutes.

Q. And during that time he gave you a lunch?

A. Yes, sir.

Q. You saw him use this knife in cutting the bread?

A. Yes, sir.

Q. You had the knife in your hand?

A. No, sir.

Q. You just saw him cut the bread with it?

A. Yes, sir.

Q. Where was it?

A. On the lunch counter?

Q. Did you make any memorandum to remember the description of that knife?

A. It made impression enough on my mind; it was a good knife, and when we come to look for the knives I said, I saw another knife that is not here now.

Q. Did anything in particular attract your attention to that knife at that time any more than it was a bread knife used to cut bread?

A. I did, but not for no object.

277 Q. Just simply come in there and noticed he had a bread knife; didn't pick it up to look at it?

A. No, sir; I didn't.

Q. And saw it laying on the lunch counter, except when he had it and cut bread with it?

A. Yes, sir.

Q. And then laid it down again?

A. Yes, sir.

Q. And yet you can swear to the color of the handle—the different sides?

A. Yes, sir.
Q. How many rivets?
A. I don't know.
Q. Was it a new or old knife?
A. Old knife.
Q. Do you know what make it was?
A. No, sir.
Q. Sharp pointed?
A. Rather on the round order.
Q. You will swear the blade was 13 inches long?
A. About that long.
Q. That is your judgment from glancing at it there?
A. Yes, sir.
Q. You never measured it, did you?
A. No, sir. I asked Thiede what became of the knife, and he told me to look for it, and I didn't find it.
Q. You say the blade was as long as from my thumb to the end of the cane?
A. Very near it.
Q. Will you say it is as long as that?
A. Very near it.
Q. How near it?
A. I can go to the hardware store and get you a knife like it and show you. Mr. Thiede brought this out himself.
Q. Will you answer my questions?
A. I say I don't know if it was just that long; it was a long-bladed knife.
Q. If that is 13 inches long would you say that blade was that long?
A. Very near it.
278 Q. It wouldn't be quite that long?
A. I can't tell exactly.
Q. Will you say it was that long, as I am illustrating now, exclusive of the handle?
A. The blade was nearly that long; maybe fully that long.
Q. That is your recollection from seeing it once when you were in there eating a lunch?
A. Yes, sir.
Q. That is the only way you ever—the only time you ever saw it?
A. Yes, sir; I don't know that it was the only time.
Q. Did you notice that knife before?
A. I am not positive.
Q. Have you any recollection?
A. I don't say I did or didn't.
Q. Have you any recollection now of seeing it before?
A. I have been in there several times.
Q. Have you any recollection now of seeing that knife but that one time?
A. I am not positive.
Q. Have you a recollection of it?
A. I have a recollection of seeing a knife there.

Q. Have you a recollection of seeing this particular knife more than once?

A. I could not positively say as to that.

Q. Have you at this time a recollection, a distinct recollection; a recollection of seeing that knife more than once on that counter that you could identify it?

A. I think I did, because I have been there several times.

Q. Did you see that knife every time you were there?

A. I don't say that.

Q. Have you a recollection of it?

A. I say I have not a distinct recollection.

279 Redirect examination:

Q. You state on one side of there was some mark or other; one side was dark and looked as though it had been burned, the other side red; was that the handle or blade?

A. The handle.

Q. Did you look for that knife before you asked Thiede about it?

A. We looked for any knife we could find.

Q. You had not found that knife?

A. Yes, sir.

Q. And asked Thiede?

A. Yes, sir; he asked me to look.

Q. That was after you spoke to him about it?

A. Yes, sir.

Q. You had looked before you mentioned it to him?

A. Yes, sir.

Q. And he said to look at the house, it should be there?

A. I don't know that he said that.

Q. He told you to look at the saloon?

A. Yes, sir.

Q. You looked, and didn't find it?

A. No, sir.

Cross-examination:

Q. At the time you went down to look for the knife, I will ask you if someone else was in possession of the saloon?

A. Yes.

Q. And had control of it?

A. Yes, sir.

Q. Who was that person?

A. I don't know his name, I think Thiede knows.

Q. Thiede was in jail?

A. I think he knew the man that had possession.

Q. I am asking you if you know who he was?

A. I don't know his name.

Q. In what capacity?

A. With Marshal Keeper.

Q. And was staying in there and had charge of it?

A. Yes, sir.

Q. When you went down, was it several days after the homœcide?

A. Yes, sir.

280 Q. He was there in possession, and you went in and found him inside of the saloon at the time?
A. Yes, sir.

Redirect examination:

Q. The first time; when was that?
A. At the time of the homocide.
Q. Did you find it that morning when you looked?
A. I never found any knife of any size on the premises myself.

The court gave the customary admonition to the jury and adjourned until 10.00 o'clock to-morrow morning.

281 TUESDAY MORNING, *Oct. 16th*, 1894.

WILLIAM MCQUEEN, cross-examination:

Q. I will ask you, when you arrested Mr. Thiede, if you had a warrant?
A. I did not.
Q. Didn't show any or tell him you had a warrant?
A. No, sir.
Q. You say you went down the evening before?
A. Yes, sir.
Q. To sort of look after the industrial army?
A. Yes, sir.
Q. About when did they go down?
(Objection as not cross-examination.)
Q. Do you know anything about the number of those men?
(Objection as not cross-examination.)
(Objection sustained. Exception.)
Q. Did you testify in this case or about this matter before the coroner, or at the preliminary hearing?
A. I didn't at the preliminary hearing.
Q. Did you before the coroner?
A. I am not positive whether I did before the coroner or not.

282 JOHN MONTGOMERY, a witness sworn in behalf of the prosecution, examined by Judge Howat, testified as follows:

Q. What is your full name?
A. John Montgomery.
Q. Were you a deputy sheriff in April or May last?
A. I was.
Q. Did you accompany Sheriff McQueen on the morning of May 1st down to Murray?
A. I did.
Q. What time in the morning did you get to Thiede's saloon?
A. About five o'clock.
Q. When did you first see the defendant, Thiede?
A. I first saw him at the south *d*ront door of the saloon building at his place in Murray.
Q. Where did you next see him; where was he and where were you?
A. I next saw him at the door on the northwest corner of the saloon building.

Q. Where was he?
A. In the doorway.
Q. Where did you see him after that? Did you go into the saloon?
A. I did.
Q. Where was he then when you went into the saloon?
A. Behind the bar.
Q. Did he come out from behind the bar?
A. He did.
Q. Where was McQueen when he came out?
A. At the end of the bar.
Q. What conversation, if any, took place between McQueen and the defendant, as you recollect it?
A. My recollection is, I stepped into the door first and passed around on the front side of the bar. McQueen followed me and stopped in the doorway, and he said, "Charley, what is the matter here?"
283 Q. What did Thiede say?
A. He said, "I killed my wife last night." The sheriff said, "Yes; I believe you. I now place you under arrest." He said, "I don't mean that; I mean someone killed my wife last night."
Q. Now, did you make an examination or observe as to whether or not there were any blood spots on the outside of the south door of the saloon?
A. I did.
Q. Were there, or were there not?
A. There were.
Q. Can you state to the jury their appearance?
A. My recollection now is that there were five or six spots of blood; some of them were on the panel of the door and others of them, too, I think, were on the casing; one was 3½ feet from the ground up, as near as I can recollect, and the highest spot I noticed came up near my shoulder, and the others were between those two points.
Q. What was the appearance of these blood spots as to whether the blood had been smeared on or spurted on?
(Objection as suggestive and leading.)
Q. What was their appearance as to whether they had been smeared on or otherwise?
The COURT. He may state.
(Exception.)
A. The spots had the appearance of being spurted on.
Q. State to the jury what their appearance was and how they looked.
A. It looked to me that the blood when it had touched the wood was warm. It had the appearance of having run a little after it had touched the board, as if it was fresh.
Q. In what direction?
A. Toward the ground.
284 Q. State whether you observed any stains of blood elsewhere upon the ground or any other place.
A. I did. There were two spots of blood on the east end of the saloon building, between the saloon building and the bridge.
Q. Did you make a measurement of the distance from the saloon to laces where the blood was?
A. I did.

Q. You say there were two spots; describe what they were, as to size, etc.

A. The first spot was just five feet from the east end of the saloon building, from the corner of the building. It was a pool of blood that covered a space of, I should say, four feet, and there was one spot that was possibly 12 in. across that had quite considerable blood.

Q. At that place, you mean?

A. Yes, sir; and the blood at that time had sort of turned black like.

Q. Indicate on the map just where that was.

A. Here.

Q. I will show you this plat and ask you if you made this plat and put the distances on it at the time.

A. Yes, sir.

Q. Was this made by you?

A. Yes, sir.

Q. Are these plats accurate, and did they give the distances accurately as you found them at that time, and the several parts mentioned therein?

A. They did, sir.

Q. Where was the other spot of blood, as you call it, from this large one—from the one that was five feet from the east end of the saloon?

A. It was in the same direction east; it was beyond this first spot.

Q. In what direction?

A. Toward the bridge.

Q. That would be east?

A. East.

285 Q. Can you say how far it was from the saloon?

A. 25 feet.

Q. Did you measure it?

A. I did.

Q. That plat indicates it was 25 feet, does it?

A. Yes, sir.

Q. What was the appearance of that spot of blood, as you term it?

A. The blood at that place was scattered more than at the other place.

Q. What do you mean by that?

A. It covered more ground.

Q. Did it cover the ground continuously, or was it in spots?

A. Several spots, and was in a sort of a circular form.

Q. State whether there was anything there that had the appearance as if there had been a struggle, people treading there.

A. Yes, sir.

Q. What appearance had the ground there?

A. There was a circle around this blood that looked as if someone had been kicking around and made a circle with the heel of the shoe or something.

Q. State whether you observed whether there was any traces of blood from the south front door of the saloon to either of those places where the blood was, east of the saloon.

A. No, sir; I didn't notice any.

Q. The question is whether there were any spots of blood or traces leading from the south door of the saloon to here, to the end of the saloon; to where the blood was found.

A. No, sir.
Q. You didn't see any?
A. No, sir.
Q. Did you notice whether there were any blood stains on the front door of the old brewery?
A. There were none I remember of.
Q. You didn't take any memorandum of those things?
A. No, sir.
286 Q. You are just speaking from your recollection?
A. Yes, sir.
Q. Did you go into the old brewery the day following to make an examination of what you could find there?
A. The day following when the arrest was made?
Q. Yes, sir.
A. Yes; I did.
Q. Did you have the keys?
A. I didn't have the keys when I went there.
Q. To get in with I mean.
A. Yes, sir.
Q. Was the door to the west as you enter there locked—the inside door?
A. Yes, sir.
Q. Did you open it with the keys?
A. I did.
Q. What did you find in there, as to there being any blood stains or not?
A. In the northeast corner of the room I opened—it was sort of a storeroom—I found an axe and something that had the appearance of being a yardstick.
Q. Where did you find them?
A. They were in the corner.
Q. What corner?
A. In the northeast corner of the room.
Q. Just as you entered?
A. Yes, sir.
Q. What position were they in?
A. Standing up in the corner.
Q. You may state to the jury whether there were any blood stains on them or not.
A. There were blood stains on both of them.
Q. What were the indications of the blood stains as to being fresh or not?
A. Fresh.
Q. Any other blood stains there?
A. Yes, sir.
Q. Where was that?
A. On the side of the wall, right over the axe and stick.
287 Q. Did they appear to be fresh?
A. Yes, sir.
Q. State whether you examined them carefully.
A. I did.

Q. Could you state what appearance it had at that time; you say it was fresh, what other appearance did it indicate?

A. It had the appearance to me of having been made by someone putting their hand up against the side of the wall.

Q. Why did you say that; what was there to indicate that?

A. It showed that portion of the hand right there.

Q. The ball of the hand?

A. The ball of the hand; and you could see the creases that are in the hand.

Q. I will ask you whether you observed any blood stains on the outside door of the brewery—that double door?

A. No, sir; I didn't.

Q. You didn't observe any?

A. No, sir.

Cross-examination by Judge CHERRY:

Q. What time did you leave Salt Lake to go down that morning?

A. We left Salt Lake about 4 o'clock.

Q. Got down there about five, you think?

A. Yes, sir.

Q. And did you drive directly down there?

A. Yes, sir.

Q. Stop anywhere on the road?

A. Stopped at Murray about three minutes.

Q. Drove through Murray and come around by the smelter, did you?

A. We took the south road.

Q. You passed by the smelters?

A. Yes, sir.

Q. Passed over Cottonwood bridge, South Murray?

A. That is the bridge just below Haynes' store.

Q. You know which way you went?

A. I wouldn't be positive whether we crossed the bridge to take that road or not. I don't remember.

288 Q. How long did you stop at Murray?

A. About five minutes.

Q. Did you drive very fast?

A. Yes, sir.

Q. Talk to anyone on the road?

A. No, sir.

Q. Did you and the sheriff talk to each other with reference to who probably committed the murder?

A. No, sir; I don't have any recollection of any such conversation.

Q. No recollection at all?

A. No, sir.

Q. You knew who had been killed, I suppose?

A. Yes, sir.

Q. You were informed that Mrs. Thiede had been murdered?

A. I was informed she had been murdered.

Q. Before you started?

A. Yes, sir.

Q. But you didn't pass any comments about who the probable guilty party was?

A. No, sir.
Q. Between each other?
A. No, sir.
Q. Are you sure of that?
A. Not to my recollection.
Q. Who did you see at Murray?
A. I saw Mr. Cahoon.
Q. Did you know he had been over to the place before you saw him?
A. No, sir; I didn't.
Q. Could you judge that from his conversation?
A. I don't know whether he had been or not.
Q. Did you gather from any talk with him that he had been there, and knew anything about who it was or where it was or what the circumstances were?
A. I hadn't had any conversation with him at all until we got over to the scene of the murder.
Q. Didn't you stop and talk with him as you went through there?
A. No, sir; sheriff got out of the buggy and went into Haynes store.
289 Q. You didn't hear the conversation?
A. I didn't get out of the buggy at all, sir.
Q. After he came out did you have any talk then about any suspicion?
A. On the way over?
Q. Yes, sir.
A. No, sir.
Q. From there over to Thiede's?
A. No, sir.
Q. When you got there you say you saw Mr. Thiede standing in the south door of the saloon?
A. Not when I got inside of the building.
Q. When you got in sight of the building?
A. Yes, sir; as we were coming down the hill.
Q. Did he stand there until you drove down past the south door?
A. No, sir.
Q. When you drove by the south door, where was he; could you see him?
A. As we turned the corner, coming down the hill, he disappeared.
Q. Where did you drive your team?
A. We drove to the fence that encloses his residence there, and tied our horses right near the little gate.
Q. Who tied the horse?
A. I won't be positive about that; I think the sheriff did.
Q. You were the first one out then?
A. Yes, sir.
Q. Did you go up toward the saloon as soon as you got out of the buggy?
A. I think I waited until the horse was tied.
Q. Then you both started toward the saloon together?
A. Yes.
Q. Did you see Thiede then?
A. No, sir; before we got out of the buggy he was standing in the west door there.

Q. You saw him, coming around the hill, at the south door,
290 then you saw him standing in the west door, as I understand it?
A. Yes, sir.
Q. You and McQueen, after getting out of the buggy, walked toward the saloon?
A. Yes, sir.
Q. When you started to go to the saloon was Thiede in sight?
A. No, sir.
Q. Who entered the saloon first, you or the sheriff?
A. My recollection is that I did; I won't be positive about it.
Q. When you went in where did you go with reference to the saloon?
A. This is the west door here.
Q. Yes, sir.
A. I came in that door and passed right around here to a point right near the end of the lunch counter.
Q. And stopped?
A. And stopped.
Q. Where was Thiede then?
A. Thiede was behind the bar, a little behind the center of it.
Q. Did McQueen follow behind you?
A. McQueen came to the door and stood there.
Q. Now, then what did McQueen do; how long did he stand there before he spoke?
A. Before I had turned around he had begun to say what he did to Mr. Thiede. I say before I had turned around here he had begun to talk to Thiede.
Q. Can you remember exactly all the language that passed between them at that time? Can you pretend to tell all that was said?
A. I do state it; yes, sir.
Q. Will you state that is all that was said, what you have stated?
A. That is all that was said at that time; yes, sir.
Q. Can you state the exact language?
A. I have stated it.
291 Q. Will you swear that was the exact language that was used?
A. Yes, sir.
Q. What did McQueen say?
A. He said, "Charley, what is the matter here?"
Q. What was the reply?
A. He said, "I killed my wife last night."
Q. Is that the manner in which he said it, about the tone?
A. He said it in a different sort of way.
Q. Can you tell about the manner in which he said it?
A. "I killed my wife last night"; just about in that way.
Q. Then what did McQueen say?
A. He said, "Yes, I believe you, and I now place you under arrest."
Q. Did he lay his hand on him or anything at that time?
A. Not at that time.
Q. How close were they together, had they changed their positions?
A. Thiede started toward him.
Q. You don't know whether he touched him or not when he said he placed him under arrest?

A. My recollection is that he did not.
Q. If he had you would have seen him?
A. I think so; yes.
Q. What did he say then—what did Thiede say?
A. He said, "I don't mean that, I mean that some one killed my wife last night."
Q. Did he say some one?
A. Yes, sir.
Q. Will you swear to that?
A. I have sworn to it.
Q. Are you certain that is what he said?
A. I am.

Q. If Sheriff McQueen has sworn that he said, "They killed
292 my wife," you would say he was mistaken, that he said "Some one killed my wife?"

(Objection. Question withdrawn.)
Q. I will ask you if you are certain that he used the word "someone" in that expression, or "they."
A. "Someone killed my wife last night."
Q. That is what he said?
A. Yes, sir.
Q. Then what did McQueen say?
A. He said, "Yes, and I believe you are the man that done it."
Q. McQueen said that right there?
A. Yes, sir.
Q. Are you sure of that?
A. Yes, sir.
Q. As sure of that as the rest of the conversation?
(Objection, as not proper cross-examination.)
Q. Are you as sure McQueen made that statement as you are he made the other statement you just testified to; is your memory as clear on that part of the conversation as it is on the other part of it?
(Objection, as not proper cross-examination.)
The COURT. Let him state if his memory is clear on that point.
A. Yes, it is.
Q. State again what the sheriff said, the last statement you have given that the sheriff said?
A. No answer.
Q. Then what McQueen said?
A. He said, "Yes, and I believe you are the man that done it."
Q. Then was there any further conversation there at that time?
A. I think there was nothing more said; I think we passed around in front of the bar at that time.

Q. Passed around the bar?
293 A. Around in front; yes, sir.

Q. Who passed around?
A. Both of them.
Q. Which came first?
A. Thiede, I think.
Q. What conversation, if any, occurred there?
A. Mr. Thiede said, "You have no right to arrest me."

Q. What did the sheriff say in response to that?

A. He said, "That is a nice way to treat a man."

Q. Who said that?

A. Thiede. "After sending for you; I have always been your friend; now, you come down here and arrest me." Mr. Thiede's wrists were tied then and that is about all that I remember of the conversation.

Q. Do you remember what the sheriff said to him?

A. No, sir; I do not.

Q. Don't remember that?

A. Not at that time.

Q. Do you remember anything else the defendant said to the sheriff after he came around behind the bar, except what you have told?

A. No, sir; I think that was about all that was said on the inside.

Q. Was that on the inside of the saloon?

A. Yes, sir.

Q. When did the sheriff tie his wrists?

A. I am not positive now whether they were tied inside of the saloon or when they walked out in front.

Q. Did you help tie him?

A. No, sir; I didn't.

Q. Didn't take any part in that?

A. No, sir.

Q. Who tied him?

A. I think the sheriff and Mr. Cahoon.

Q. You saw it, did you?

A. I didn't see them do the tying; when they stepped outside of the door I walked over to where the body lay on the table.

294 Q. You didn't see them when they were outside, then?

A. No, sir; there might have been five minutes elapse between the time they went out and when I saw them next.

Q. Did you see the sheriff when he struck Thiede?

A. No, sir; I didn't.

Q. You didn't see any of that occurrence?

A. No, sir.

Q. After the defendant was arrested I will ask you if you heard him say anything to the sheriff about going around and looking for any evidence, or looking at the premises, or examining the house, or anything of that kind?

A. I think he did. He spoke to the sheriff about two young Swedes having been there the night before, and asking for something to drink, or getting something to drink; I won't be positive what he said. He told the sheriff where they lived, I think; lived over in Burgatown, or whatever they call it, and I think he accompanied the sheriff and Mr. Cahoon over there.

Q. Didn't you go up with them?

A. No, sir.

Q. You saw them start to go up?

A. Yes, sir.

Q. But you didn't accompany them?

A. No, sir.

Q. Did you hear Mr. Thiede say anything about going down to the house; didn't he ask the sheriff to go to the house and see what he could discover, if anything, down there?

A. I think he did make some such statement to him; yes, sir. I know they went over there.

Q. Did Thiede go over there?

A. I won't be positive about that; I think he went with the sheriff.

Q. Wasn't Thiede excited and crying, and imploring the sheriff to go down and hunt up evidence, and see those Swede boys?

295 A. Mr. Thiede was a good deal excited; he was talking a good deal.

Q. Was he crying any?

A. Not at that time; I think not.

Q. At any time after he was arrested, and before he was taken away?

A. Yes, sir.

Q. You say you saw some spots of blood on the south door of the saloon?

A. Yes, sir.

Q. Who was present in the saloon at the time you and the sheriff came in, when you had that first conversation?

A. Who was on the inside of the building?

Q. Yes, sir.

A. Dr. Farrabee was one, and I think that Mr. Lauenberger was on the inside; I won't be positive about him, but I know the doctor was on the inside.

Q. Weiler in there?

A. I think Weiler was outside. I think he came in after us.

Q. Are you sure of that?

A. I won't be positive about that.

Q. Do you know Ahlburg?

A. Yes, sir.

Q. Was he there inside at the time this conversation took place?

A. I don't remember him; no, sir.

Q. Did you notice who was in there when you walked in?

A. Yes.

Q. Didn't you eye Mr. Thiede when you went in, and keep your eye on him more than any one else when you went in first?

A. I looked at Thiede and then I glanced around the room

Q. Can you say who was present in the room at that particular time any further than what you have?

A. I wouldn't state positively except to Dr. Farrabee.

296 Q. Wasn't Albert Cahoon in there?

A. I think Albert Cahoon came in behind us.

Q. Do you know whether he came in at the time the conversation was going on?

A. Yes, sir; I think he did; I think he was right behind the sheriff.

Q. I will ask you about those spots of blood on the south door; when did you notice them first?

A. After the sheriff came back with Thiede from over there at Burgatown.

Q. That same morning?

A. Yes, sir. We took Thiede over to the brewery there where there are some steps up to one part of it, and sat Thiede down on those steps, and then we went back over to the door.

Q. Who was with you when you looked at those spots of blood?

A. The sheriff, Mr. Cahoon, and Dr. Farrabee.

Q. You examined them together?

A. I looked at them two or three times.

Q. Did you call each other's attention, or speak to each other, so that the others would see what you saw?

A. My attention was called to the spots by Dr. Farrabee, I think.

Q. You say they had the appearance of being warm blood; can you swear the blood was warm when it was put on there?

A. It had the appearance of having been warm when it struck the wood.

Q. Could you tell it was warm when it struck there?

A. No, sir; I couldn't.

Q. You don't pretend to tell by looking at a spot of blood whether it was warm when it was put on there.

A. I said it had that appearance.

297 Q. Do you mean warm or fresh?

A. Warm.

Q. You meant from its appearance, in your judgment, it could not have been blood that had been shed long enough for the warmth to have gone out of it, even if it was in the fluid state and had not coagulated?

A. I don't think it could have spurted unless it had been warm.

Q. You say it must have been warm?

A. It looked to me as if it was warm.

Q. Are you an expert on blood stains?

A. No, sir.

Q. Did you ever examine blood stains before with a view of determining whether they had been put on fresh?

A. I never did; no, sir.

Q. Your attention never was called to that question before?

A. No, sir.

Q. It is only an opinion you have; a conclusion in your own mind?

A. That is all.

Q. You don't claim to have any special knowledge on that subject; you don't claim to have any special knowledge of the character of blood stains so as to determine when they were made with reference to the time the blood was shed?

A. No, sir; I don't.

Q. You say you saw a spot of blood on the east side of the saloon?

A. Yes, sir.

Q. Do you mean to say you saw those spots of blood on the saloon building?

A. No, sir; on the ground.

Q. How far were they from the building, east?

A. The first one was five feet.

Q. How far north from the corner?

298 A. I didn't measure; I *I* should say about one foot and a half.

Q. That is to the first part of the blood?

A. Yes, sir.

Q. What direction did that pool run? Was it circular or was it longer one way than another?

A. Circular.

Q. Was that the largest one that you are describing now?

A. Yes, sir.

Q. There was not a long pool of blood anywhere there you could see on the east side of the saloon building within four or five feet of it?

A. A long pool of blood?

Q. Yes; where it ran longer one way than the other?

A. No, sir; there was not; there was one spot where there was more blood in the circle than at any other point.

Q. What other spot of blood did you see right east of the saloon; any other one?

A. Yes; there was another one 25 ft.

Q. Was it all in one spot within four or five feet?

A. It was all in that one circle.

Q. One circle?

A. Yes, sir.

Q. How many feet east of that?

A. It was 25 feet from the building.

Q. In what direction?

A. Easterly direction.

Q. Was it south of east or north of east of the big pool of blood that you found?

A. A trifle south and east.

Q. What was the character and appearance of that spot of blood; how large was it?

A. The blood spots were scattered around possibly three or four feet.

Q. Were there any indications of footprints over where the spots of blood were?

A. No, sir; around in a circle. The footprints that looked like
299 it had been scraped by a foot almost completely encircled the blood spots.

Q. Just a round circle?

A. Yes, sir.

Q. No footprints inside of that circle?

A. They extended almost clear around.

Q. Wasn't the soil torn up considerably?

A. Yes; it was.

Q. And those blood stains were scattered around over that broken surface, were they?

A. Yes, sir.

Q. They were not in a solid body, but were scattered around, do you mean to say?

A. Yes, sir.

Q. Now, did you try to find any stains from those blood stains you found 25 feet east to where they found the blood stains closer to the building? Were there connecting those two together?

A. I didn't notice any.

Q. You looked for them, didn't you?

A. I did; yes, sir.

Q. The sheriff and doctor examined those premises that morning?
A. Yes, sir.
Q. Walked along there and examined it?
A. Yes, sir.
Q. When did you first go in the brewery that day, or did you go in that day at all?
A. Yes, sir.
Q. What time?
A. I went in the brewery about an hour after we got there.
Q. Is that when you found the axe and stick?
A. No, sir.
Q. What part of the brewery did you go in, and what part did you explore?
A. I went in the plade where they have the big tub there, the washing tub he had his beer kegs in.
Q. Where those double doors are, big doors you open and go in?
A. The door facing north on the brewery. I don't know
300 whether it is a double door or not. I went through the front door and through that room and back into a back room there, and from there I went up into the loft where he had some barley or something upstairs; from the loft I went up to where he had his barley.
Q. That is all the places you went at that time?
A. Yes, sir.
Q. Anybody with you?
A. Mr. Weiler and Cahoon were, I think, right at the door; I don't think there was anybody followed me into those places.
Q. Didn't Thiede go along with you?
A. He afterwards did; yes, sir.
Q. Didn't he unlock the doors for you to get in?
A. He showed me how to get up through the trap door there.
Q. Answer the question?
A. I don't think he unlocked any doors; I know he didn't; I had the keys.
Q. Did you unlock them?
A. I unlocked the doors.
Q. Where did you get the keys?
A. I had the keys.
Q. Where did you get them?
A. The sheriff took the keys from Thiede.
Q. And passed them over to you?
A. Yes, sir.
Q. When did you go in the brewery again, if at all?
A. I was in there half a dozen times during that day, morning and afternoon.
Q. You spoke about going into a storeroom where you found an axe and a stick and blood spots; I will ask you when you first entered that room; do you remember?
A. On the afternoon of the second of May.
Q. That was the afternoon after the day you were first down there?
A. Yes, sir.
301 Q. I will ask if there is not a door between that room and the main room where you first enter?

A. The door is on this diagram.
Q. Look at the diagram and then state.
A. There was a door just inside of the large one there as you pass in.
Q. Which way does that door open?
A. It swings toward the north.
Q. In other words, swings out from that room you enter?
A. It swings toward the front door, toward the large door.
Q. Swings outward instead of inward?
A. Yes, sir.
Q. As you turn to go west that door swings outward from the room you are trying to enter?
A. Yes, sir.
Q. Was that door locked when you entered it that day?
A. Yes, sir.
Q. Who unlocked it?
A. I did.
Q. Had you been in that room before?
A. No, sir; I hadn't.
Q. Who was with you at that time?
A. Deputy Marshal Archer and Mr. Smith of Murray or Sandy, and I think Mr. Pearson was along.
Q. Where was McQueen?
A. I think he was down near the creek there.
Q. He went down with you, did he, on that occasion; he was on the premises, wasn't he, or was he?
A. I won't be positive about that; I think he was.
Q. You don't remember?
A. I don't.
Q. When you went in there, what investigation did you make, if any?
A. I looked around the room and looked in the corner.
302 Q. What did you find?
A. I found the axe and stick I have described.
Q. Anything else that you noticed particularly?
A. I noticed a blood spot on the side of the wall.
Q. Was it on the wall?
A. It was on a post there.
Q. On part of the frame of the door?
A. I wouldn't be positive whether it was on the door frame or partition.
Q. Was the axe and stick right under that?
A. Yes, sir.
Q. How high was that spot from the floor?
A. It came pretty high up on my shoulder.
Q. You didn't measure it particularly in that respect?
A. I don't think I did; no, sir.
Q. Did you notice whether there was a nail driven in the wood about 15 or 16 inches above that blood spot?
A. I don't have any recollection of it.
Q. You didn't notice carefully the surroundings of that blood spot?
A. I think I did, but I don't remember having seen a nail; there may have been one, though.
Q. Didn't Smith or Pearson call your attention to that nail?

A. No, sir.
Q. Are you sure of that?
A. I am.
Q. Which did you find first, the stick and axe or the blood spot?
A. Stick and axe.
Q. When you found them, who did you show them to first?
A. I think I turned to Mr. Smith; that is my recollection now; they were all right there together.
Q. You didn't show them to McQueen and call him there.
A. My recollection is that I didn't show them to him at that time.
303 Q. Did you put them back there then?
A. I took them out and put them in the buggy.
Q. You didn't set them back and go off and leave them there?
A. No, sir.
Q. You brought them out and put them in the buggy?
A. Yes, sir.
Q. When did you show them to McQueen, if ever?
A. I am not positive whether I showed them to him at that time or not.
Q. When did you examine that blood spot that you spoke of?
A. At the same time I found the axe and stick?
Q. Looked at it then?
A. Yes, sir.
Q. Is that the time you determined it was a blood stain?
A. Yes, sir.
Q. Is that the time you saw the print of a man's hand.
A. Not the print of his hand.
Q. What you call the grain of the hand?
A. Yes, sir.
Q. The palm of the hand; the ball of the hand; at the time you first found it you examined it and drew your conclusions as to what made the stains?
A. I did, sir.
Q. At that time?
A. Yes, sir.
Q. Did you have a light there?
A. I had a candle.
Q. Candle?
A. Yes, sir.
Q. What kind of a surface was it that the stain was on?
A. My recollection now is that it had been whitewashed.
Q. Was it a dressed board or undressed?
A. I think it was a rough board washed over.
Q. And do you pretend to say that you could distinguish the grain of the skin of a person on that stain?
A. I did.
304 Q. You didn't have any glass to examine it?
A. No, sir.
Q. Did you call the attention of anyone else, that they could see the grain?
A. I did.
Q. Who?

A. Mr. Archer's attention.
Q. Did he look at it?
A. He did.
Q. Was that the only time you examined it with reference to determining that fact, whether it showed the grain of the skin of the hand?
A. I was in there two or three times that afternoon, and I think that I looked at it every time I was in there.
Q. Do you know whether anyone put their hand on that or not?
A. Before I did?
Q. Before you had examined it.
A. Nobody that was in the room with me at the time. I was the first one that saw it.
Q. Didn't McQueen put his hand over it when you were there?
A. He might have done afterwards. I don't say positively he was there at all at the time. I don't remember whether he was or not.
Q. Wasn't there several walked up to illustrate, and put their hand on there to show how one would touch it; weren't they doing that, those that were present?
A. I don't have any recollection of it.
Q. Do you think you would recognize the stain if you would see it on the same piece of timber it was on?
A. I don't know.
Q. You have seen it several times, haven't you, since?
A. I saw it, I guess, a dozen times.
Q. When was the last time you saw it?
A. Sometime about the 10th of May.
305 Q. I will ask you to look at that piece of timber and say whether or not that looks like the stain you have been describing?
A. Yes, but there was more blood on it than that when I first saw it.
Q. Is that it?
A. It looks very much like it.
Q. Like the timber?
A. Yes, sir.
Q. Which was the up and down; which was the upper part of that?
A. I couldn't say as to that.
Q. You couldn't tell whether it set that way or whether it set that way?
A. No, sir; I think it set the other way.
Q. That way?
A. I think so.
Q. That would be your judgment, would it?
A. Yes, sir; I won't be positive whether it was on the north side or east side.
Q. It was the north side, going into the room?
A. Yes, sir.
Q. Not on the south?
A. No, sir.
Q. You don't know which way it was?
A. No, sir.
Q. You don't remember how far it was from the door, how close that spot was to the door, do you, when the door would be closed?
A. It was right in the corner; I should say from 3 to 5 feet.

Q. I mean the door, not the big door; the door that goes into this little room, and you say you found this axe and stick under this spot. There was a door you opened, you said, swung north and outwardly. How near was that door to this timber?

A. I say, to the best of my recollection, it was between three and five feet.

306 Q. Between three and five feet?

A. Yes, sir.

Q. That is your recollection?

A. Yes, sir.

Q. From the entrance to the door from this corner?

A. I am talking about the small door that opens into that storehouse.

Q. You mean this stick was between three and five feet west of that door?

A. No, sir; I say, to the best of my recollection, it was between three and five feet toward the north.

Q. West of the door?

A. North.

Q. North of the door?

A. Yes, sir.

Q. Where is the stick and axe you found?

A. I have it with me.

Q. Have you it in court?

A. Yes, sir.

Q. That is the axe, is it?

A. Yes, sir.

Q. And this is the stick?

A. Yes, sir.

Q. I will ask you if you didn't find a knife in the saloon?

A. I did.

Q. Where did you find that knife?

A. I found it under the mattress behind the lunch counter in the southwest corner of the saloon building.

Q. Did you examine the knife?

A. I did.

Q. What did you do with it?

A. At that time?

Q. At any time; what did you do with the knife after you found it?

A. I brought it out and showed it to the sheriff and Mr. Cahoon, and Dr. Farrabee and Mr. Weiler, I think.

Q. Did you examine it, any of you?

A. We all did.

Q. Examined it to see if you could find any blood stains on it?

A. Yes, sir.

307 Q. Did you find any?

A. No, sir.

Q. What did you do with the knife finally?

A. The knife is in the sheriff's office now.

Q. It was brought to the sheriff's office?

A. Yes, sir.

Q. Have you the possession of the knife?

A. It is in the safe at the office.

Q. Will you bring it to court?

A. Yes, sir; I will.

Q. I would like to have it brought here. Is that the first time you saw it when you found it under the mattress?

A. Yes.

Q. When did you find it there?

A. I found it that morning the arrest was made.

Q. Same morning?

A. Yes, sir.

Q. About how soon after you entered the saloon and heard the conversation with Thiede; about how soon after that?

A. I think it was when we came back into the saloon a second time; it was possibly an hour and a half after we had gotten down there.

Q. An hour and a half after you got down there?

A. Yes, sir.

Q. Something like half past six if you got there at five; about half past six or seven?

A. About half past six or seven o'clock.

Q. At the time you found it, did you call anyone's attention to the fact of your finding that knife?

A. Yes, sir.

Q. Whose attention did you call to it?

A. The sheriff's attention.

Q. Anyone else's?

A. Mr. Cahoon, Weiler, and Dr. Farrabee, I think.

308 Q. Did you tell them where you found it?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. What, if anything, did the defendant say as to what his wife said when they found her lying out there? State what he said, if he said anything, about that; state what he said she said.

A. He said when he went up to where the body lay she said, "Oh, Charley!"

Q. I will call attention to the clothing of the deceased that night. Do you remember whether there were any blood stains on his clothing?

A. Yes; there were.

Q. I will *a*show you a silk handkerchief; was that taken from the defendant?

A. Yes, sir.

Q. State to the jury whether there were blood stains on that at the time or not.

A. This handkerchief was not taken from Thiede until after we got to the coroner's office.

Q. Was it taken from him then?

A. Yes, sir.

Q. What pocket did he have it in, or do you remember?

A. I don't remember.

Q. Were there any blood stains on it at that time?

A. There were.

Q. Can you state about how many?

A. No, sir; I don't remember as to the number of spots.

(Judge Howat introduces the handkerchief in evidence.)

(No objections.)

Q. Do you remember whether there were blood spots on the shoes of the defendant?

A. There were on both of them.

Q. Do you remember whether there were blood spots on the drawers of the defendant?

A. There were.

309 Q. About what part?

A. On the inside of the fly, right down here.

Q. State whether any oilcloth or linoleum was found with blood stains on it.

A. There was.

Q. Where was that?

A. It was the covering of the lunch counter.

Q. How big a piece was it?

A. It covered the entire distance of the counter; I have the measurements of the counter here.

Q. Do you know what became of it, where it is now?

A. I don't, sir.

Q. It was taken before the magistrate at the examination, and all these other things were introduced?

A. Yes, sir.

Q. And it has disappeared; you don't know where it is now?

A. I didn't know it had disappeared until yesterday, until I was told first about it.

Q. When you went to get the things in the sheriff's office?

A. Yes, sir.

Q. Now, where were the blood stains on that with reference to the lunch counter? Can you illustrate by the diagram there?

A. There is an under counter under the lunch business; there is a shelving on the left side of the lunch counter; there is sort of a shelving that comes out a couple of feet, I should say, from the lunch counter, and between that and the west shelving here the cot stood with the head of the cot against the south end of the building. The pillow was on the head of the cot at that end.

310 Q. Where with reference to that, was the blood stains on the cloth or covering of the lunch counter?

A. Immediately in front of the cot.

Q. How many blood stains were there there?

A. My recollection now is that there were three.

Cross-examination:

Q. I will ask you if you have had any experience in regard to blood stains. You have seen drops of other liquid matter, haven't you, strike a perpendicular surface?

A Yes, sir.

Redirect:

Q. What is the reason you state to the jury in your judgment the blood had gone on there in drops warm? State to the jury what the appearance was that indicated that to your mind.

(Objection as not redirect examination. He has gone over that, and I have simply cross-examined him as to being an expert.)

The COURT. He may state.

(Exception.)

A. Well, the spots had touched the wood, or had the appearance of having touched it. First it had run down the side of the board.

Q. How large were those spots on the door?

A. One of them that I remember was as large as a bean.

Q. That is, the surface?

A. Yes, sir.

Q. You didn't mean it stuck out as large as a bean?

A. Yes, sir.

Q. When you speak about the spot of blood where the struggle took place, do you mean there was one bid spot there or spots of blood around there?

(Objection as repetition.)

Q. I will ask you whether it was a spot of blood or a place where there were several spots of blood?

311 (Objection as repetition. Exception.)

A. You have reference——

Q. I have reference to the one where there was the appearance of a struggle. I want to know whether there was one spot there or several spots there at that place.

A. There were several spots enclosed in that circle.

Q. How large were those spots?

A. The largest one, to the best of my recollection now, must have been six or eight inches across.

Q. Where this pool of blood was, or what you call the spot, how large was it?

A. There was blood all on the inside of a circle there.

Q. Was it an exact circle?

A. No, sir.

Q. Was it longer one way than the other or not?

A. There was one pool, the largest spot, that had a very considerable amount of blood, and then it was spread out a little from that.

Q. In what shape was it, then; oblong, circular, square, or what?

A. It was north and south.

Q. Which way; the long way?

A. Yes, sir.

Q. Long way north and south?

A. Yes, sir.

Q. How large was that; about how much surface would it cover?

A. Three or four feet.

Q. Do you mean now diameter or what?

A. A circle drawn around where the furthest blood was I should say would be about four feet around.

Q. I understand you to say you took no memorandum of any of these things; you speak simply from recollection?

A. I took no memorandum as to the distance around that blood; no, sir.

312 Q. The only memorandum you took was simply as to the distances?

A. Yes, sir.

Q. As to the blood stains, where they were, and the door, you took no memorandum?

A. No, sir.

Q. You speak now simply from recollection?

A. Yes, sir.

Judge HOWAT offers in evidence these two plats, which the witness identifies and says are correct.

Judge CHERRY. I would like to see them.

Cross-examination by Judge CHERRY:

Q. Who made this plat?

A. I did.

Q. Are you a surveyor?

A. No, sir.

Q. Engineer?

A. No, sir.

Q. Draughtsman?

A. No, sir.

Q. To what scale of inches is this made?

A. No scale at all.

Q. As a matter of fact, as to showing distances, it is not correct at all?

A. The distances are correct; yes, sir.

Q. As to showing the distance from State street over here to the Thiede place, is that a correct statement of it?

A. There is no distance mentioned there, I think, across.

Q. Does it show the relative positions, taking these distances as you have them here? Does that extend to the entire plat?

A. No, sir.

Q. You have just simply drawn this from your recollection of the way it stood; you don't pretend to say those buildings are marked correctly, as they are actually on the ground?

A. I won't state positively about that.

Q. I will ask you if you have not got the saloon and the building

313 closer together than they actually are, according to that plat?

A. Not closer than the distances indicate.

Q. Is the map drawn with reference to their relative positions; are the positions correctly represented? For instance, the saloon is here and the house here; is that a correct representation of it as it actually exists?

A. Only as I understood it, and saw it there.

Q. As a matter of fact, the road that goes up the hill, does the brewery come out to the corner of that road, as you have it shown?

A. No, sir; it does not.

Q. What part of it is correct?

A. The distances.

Q. You can take that on a piece of paper and tell the distances without marking it out? You can write it down and say what the distances are from the saloon to the house, from the south door of the saloon to the brewery door and Lauenberger's door to the saloon, and where these spots of

blood, the number of feet from the house; you could tell that by putting it on a piece of paper without showing the buildings, couldn't you?

A. Yes, sir.

Then we object to the introduction of that plat as being a correct plat of the premises.

Judge HOWAT. We claim it is correct as to the measurements he took.

Judge CHERRY. He admits it is incorrect, except as to distances.

Redirect examination by Judge HOWAT:

Q. You stated it was five feet from the east wall of the saloon to the pool of blood.

A. Yes, sir.

314 Q. About 25 feet to where this struggle had evidently taken place?

A. Yes, sir.

Q. About how far is it from the saloon to the dwelling house of Thiede?

A. According to my measurement, 130 feet.

Q. How far from the saloon to the house of Lauenberger, where he lived?

A. From the south door, 49 feet.

Q. How far is it across between the saloon and brewery—from the south front door of the saloon to the door of the storehouse—that is, the large door?

A. 45 feet, 6 inches.

Q. I will ask you at the time you were that morning; when you went there you say you saw the defendant standing in the south door of the saloon?

A. As we came down the hill; yes, sir.

Q. Did that front door stand open all that morning?

A. No, sir; after we took Thiede out, when the people began to gather, we locked the front door and side door.

Q. But at first, till that happened?

A. It stood open.

Cross-examination:

Q. Did you lock the west door?

A. Yes, sir.

Q. Both doors?

A. Yes, sir.

Q. How long after you got there before you locked the building up?

A. I don't remember just when it was; it was when the people began to gather around there; it might have been one hour or one hour and a half.

Q. Did you lock it up before you took Thiede away.

A. Yes.

Q. Sure of that?

A. Yes, sir.

Q. Just before?

A. Some time before.

315 Q. After the people had begun to come around and go in and pry around?

A. Yes, sir.

Q. Did you leave any one in the saloon?

A. When we locked it up?

Q. Yes, sir.

A. No, sir.

Q. When you first saw Thiede standing in the door of the saloon, how was he dressed?

A. He had a white vest on, sort of a brown pair of trousers, and he had this coat on.

Q. That coat on?

A. Yes, sir.

Q. That is the coat he had on?

A. No, sir; I don't think he did have a coat; come to think of it, he was in his shirt sleeves and a vest. I think he went to the house afterwards and got a coat. I wouldn't be positive, but I think he did.

Q. You are not positive about the coat?

A. I am not.

Q. At the time he was arrested and talked in the saloon, you don't remember whether he had a coat on or not; when he stood behind the bar, and when he went out, and when he was tied, you don't remember whether he had a coat on or not?

A. I don't think he did.

Q. Judge HOWAT. *Q* You don't think he had a coat on?

A. No.

Q. You say the blood spots were five feet east of the saloon; was that to the edge of the blood or center?

A. That was to the edge.

Q. The edge nearest the saloon?

A. Yes, sir.

Q. And you say that blood stain would extend four or five feet in size?

A. Yes, sir.

316 Q. I don't understand whether that blood spot was of an oblong character or round or irregular in shape.

A. The larger pool was circular in shape, and then there were some spots.

Q. You say there was some blood on the lunch counter?

A. On the linoleum that covered the lunch counter.

Q. What is the size of the blood stains?

A. They were small spots. About as large as the joint of my thumb, I should say.

Q. Did they look like they had been spurted there?

A. No, sir.

Q. Didn't look like warm blood?

A. Just like the spot on that stick.

Q. Did they look like warm blood?

A. I couldn't say whether they looked like warm blood or not.

Q. Did you take that oilcloth or linoleum away from there?

A. Yes, sir.

Q. What did you do with it?

A. It was brought to the sheriff's office and afterwards taken to the preliminary hearing at the city hall and I thought from there brought back to the sheriff's office.

Q. Wasn't it?

A. I don't know whether it was or not.

Q. Have you ever seen it since?

A. I never have.
Q. Was it introduced in the evidence at the city hall?
A. Yes.
Q. You are sure of that?
A. Yes, sir.
Q. And you have never seen it since that time?
A. I never have.
Q. You are a deputy in the sheriff's office?
A. Yes, sir.
Q. You stay around the office a good deal of the time?
A. Yes.
Q. Have you ever looked for that oilcloth in there?
317 A. I never did; the bundle was all bound up in that paper that was brought in here.
Q. Haven't you seen that in the sheriff's office since the preliminary hearing?
A. I am positive that I n'ver have.
Q. Who else has charge of that office besides the sheriff?
A. He has three deputies besides himself.
Q. Who stayed around the office the principal part of the time?
A. Welsh.
Q. Anyone else who stays there at night?
A. No one stays at night.
Q. Any other deputy besides Welsh in the office?
A. Yes, Matthews and Steele and Mr. Heard.
Q. They are office deputies?
A. They are in and out during the day.
Q. Mr. Welsh is an office deputy?
A. Yes, sir.
Q. Any other office deputies?
A. No, sir.
Q. Can you swear just where those stains were located with reference to the counter?
A. About where I indicated.
Q. How far from the south side of the building?
A. To the first spot?
Q. Yes, sir.
A. About five feet.
Q. How far was the farthest spot from the north end of the lunch counter?
A. About midway between the ends of the counter.
Q. How long was the counter?
A. 11 ft. 8 in.
Q. One spot about five feet from the south side of the building and the other one about half way? They were pretty close together?
A. Yes, sir.
318 Q. You noticed three small spots?
A. My recollection is now that there were three.
Q. Would you swear it was blood?
A. Yes, sir.

Q. Make any special examination of it, any more than just look at it—ocular?

A. I looked at it several times that day.

Q. Ever look at it with a glass?

A. Not there; no, sir.

Q. Ever look at these spots afterwards with a glass?

A. I did; yes, sir.

Q. Have you ever had any experience in the examination of blood stains?

A. I have not.

Q. To determine whether they were are were not blood stains, except more than the common observation of persons; you have made no special study of it?

A. No, sir.

Q. Were you ever called on before to determine whether a stain resembling a blood stain was a blood stain or not before this trial?

A. I was a witness in a murder trial once before.

Q. Did the question of blood stains arise?

A. It did.

Q. And you gave testimony on that subject?

A. At that time; yes, sir.

Q. Did you make any study or examination at that time so as to be informed?

A. I did not.

Q. Or ever read anything on the subject?

A. No, sir.

Q. You stated there was blood on the defendant's drawers, when did you first notice that?

A. When they were taken off him.

Q. When was that?

A. At the coroner's office.

Q. What day?

A. On the afternoon of the day of the arrest, I think.

319 Q. Where?

A. It was in the back room of Mr. Taylor's office, Third South street.

Q. In Salt Lake City?

A. Yes, sir.

Q. Show where those stains were.

A. Right there.

Q. You pronounce that a blood stain?

A. It is not as visible now as it was.

Q. What caused it to become invisible?

A. I don't know, sir.

Q. Has it been handled any to your knowledge?

A. No, sir.

Q. That is the stain on the left side, is it?

A. Yes, sir.

Q. Those are the drawers he had on at the time he was arrested?

A. Yes, sir.

Q. Those are the only blood stains you found?

A. Yes, sir.

Q. Can you find any blood stains on that handkerchief that you will swear are blood stains?

A. I don't think so, now, sir.

Q. Were there any on it when you examined it that you would swear were blood stains?

A. Yes, sir.

Q. Point them out.

A. I can't now.

Q. What part of the handkerchief?

A. Different parts.

Q. How many?

A. Four or five spots.

Q. And you have no way of marking them or telling where they are, and you cannot find them now or any indications of them?

A. No, sir.

Q. Have you looked for them?

A. I have.

Q. They have disappeared, have they?

A. To the best of my sight they have.

Q. The blood stain on the knee of those drawers has disappeared also, hasn't it, if there ever was any on there?

320 A. I *A. I* don't know that I noticed any on the knee.

Q. It has disappeared?

Redirect examination:

Q. You say you called the attention of Archer to this; who is he?

A. Deputy U. S. marshal.

Q. What was the appearance of those blood stains on the linoleum as to being fresh made or not?

A. It had the same appearance as the stain on the post.

Q. At that time, you mean?

A. Yes, sir.

Q. You were a witness before the magistrate?

A. I was.

Q. You didn't have these articles of clothing at that time?

A. I did.

Q. And this piece of linoleum?

A. Yes, sir.

Q. And you supposed the linoleum was brought back with it?

A. Yes, sir.

Q. Where have they been since that time?

A. In the sheriff's office.

Q. Tied in that bundle?

A. Yes, sir.

Q. In what place?

A. A closet in one end of the office.

Q. Is it locked?

A. Yes, sir.

Q. Kept locked?

A. Yes, sir.

Q. That is where they have been since that time?

A. Yes, sir.
Q. You were not aware the linoleum was not there until yesterday?
A. Within the last three days.
Q. Have you hidden it away or know anything about where it is?
A. No, sir.
Q. Or has anybody to your knowledge?
A. No, sir.

321 Cross-examination:

Q. When did you get that handkerchief from the defendant?
A. It was taken out of his pocket there at the coroner's place by the sheriff.
Q. Wasn't it taken away at the preliminary hearing; if he didn't have it in his pocket and taken away from him there at that time?
A. The coroner's office is my recollection.
Q. Will you bring that knife into court?
A. Yes, sir; do you want it now?
Q. Sometime; two o'clock will do. I want to recall you then.

322 L. L. ARCHER, a witness sworn and examined for the prosecution testified as follows:

By Judge HOWAT:

(Judge Cherry objects to this witness testifying for the reason he has been in the court room and heard the evidence of Mr. Montgomery.)

Judge HOWAT. Did you hear it?

WITNESS. Part of it.

Judge CHERRY. And his name has not been furnished us till after the trial began, but the former objection I insist on; he was in the court room and knew the order of the court was that he should be kept out.

Judge HOWAT. I didn't know when he was subpœn'ed.
Q. When were you subpœn'ed?
A. A few minutes ago.
Q. Did you know anything about the order to keep out of the court room?
A. No, sir.

Judge HOWAT. I didn't know anything about him; he has heard Montgomery's testimony but I don't think that should prevent the witness from being sworn and testifying. He didn't disobey the order of the court.

Judge CHERRY. That is in the discretion of the court your honor.

Judge HOWAT. I didn't know he was a witness; didn't know anything about him; never saw him in my life.

Judge CHERRY. Didn't you notify me Saturday that you had his name on the list you showed me?

Judge HOWAT. I didn't subpœna him and didn't know anything about what he would testify to and I didn't intend to call him and he was not subpœn'ed.

323 Judge CHERRY: Here is the notice you gave me Saturday and it has L. L. Archer's name on it.

Judge HOWAT. I put the names on that were given me. There was no subpœna issued until Montgomery went on the stand this morning.

Q. What part of Montgomery's testimony did you hear?

A. Just the last part.

The COURT. How long have you been in the court room?

A. Not to exceed five minutes, I don't think.

Q. Did you know anything of the order of the court?

A. I didn't.

Q. You were here not to exceed five minutes?

A. I don't think so.

Q. Did you hear the examination in chief of the witness?

A. No, sir; I didn't.

The COURT. If he has not been here any longer than that he may testify.

Judge CHERRY. We except.

Q. (By Judge HOWAT.) What is your name?

A. L. L. Archer.

Q. Deputy marshal?

A. Yes, sir.

Q. Were such in April and May of this year?

A. Yes, sir.

Q. Did you go down to the Thiede saloon sometime after Mrs. Thiede was killed?

A. Yes, sir.

Q. What day of the month was it, how long after she was killed?

A. I don't remember; I think the next day, though.

Q. Did you look at the south door of the saloon to see if there were any blood stains on it or not?

A. Yes, sir.

324 Q. Did you state there were blood stains there?

A. Yes, sir; the south front door.

Q. How many were there?

A. I couldn't say.

Q. Did you notice whether there were any blood stains on the door entering into the brewery—the large door?

A. I didn't notice any.

Q. I want to call your attention as to whether Montgomery called your attention to any blood stain inside of the inner part of the brewery building?

A. Montgomery or McQueen, one of them did.

Q. Where was that blood stain, or what you took to be a blood stain?

A. It was on a piece of linoleum or on the counter.

Q. The question is as to the inside of the brewery building?

A. Excuse me; I understood the saloon building. My attention was called to some blood stains by Montgomery on a broom handle or stick, and an axe handle, I believe.

Q. Any other place?

A. I think not.

Q. To refresh your memory, I will ask you if your attention was called to a blood stain above that on an upright post?

A. It might have been; I don't remember as to that now.

325 Q. Now, about these blood stains on the linoleum or lunch counter; did you see blood?

A. I saw some blood stains on the linoleum, or something of that kind, that looked like a hand had been put down on the linoleum.

Q. On the lunch counter?

A. On the lunch counter.

Q. Can you state what part of the lunch counter?

A. There were two or three stains on there, it seemed to me, and one, I think, was a little nearer the south end and the other was probably very near the middle and one probably toward the north end.

Cross-examination by Judge CHERRY:

Q. Indicate where the blood stains were on this map?

A. [Witness indicates.] I was not there on criminal business; I was there on other business, and didn't pay much attention to this. My attention was just called to these matters, and that is my recollection, as I stated.

Q. You closed up the saloon under an attachment, did you not?

A. Yes, sir.

Q. Took charge of the brewery?

A. Yes, sir.

Q. Also had the keys to the brewery after that second day?

A. I think so; yes, sir.

Q. You had custody of the premises generally?

A. Yes, sir.

Q. Acting under the U. S. marshal?

A. Yes, sir.

Q. As his deputy?

A. Yes, sir.

Q. Who remained in charge of the premises after that?

A. A fellow named Doreman.

Q. How long did you have the custody of those premises?

326 A. 14 or 15 days.

Q. Wasn't it over 20 days?

A. It might have been; yes, I think it was over 20 days.

Q. Who showed those stains on the axe and stick to you first?

A. Montgomery.

Q. Where were you?

A. In the brewery.

Q. With him?

A. Yes, sir.

Q. Were you in there when he found them?

A. Yes, sir.

Q. You realized this was an important and grave matter?

A. Yes, sir.

Q. And as an officer of the law, you naturally felt some interest in the detection of the guilty party?

A. As much as anybody would, I suppose.

Q. You didn't treat it as a light and trivial matter and pay no attention to it, did you?

A. No, sir.

Q. What you saw and observed would make an impression on your mind that would be lasting, would it not?

A. Yes, sir.

Q. Did you examine that axe handle and stick at the time?

A. I looked at them.

Q. Will you look at them now and see if that is the same axe and stick?

A. I couldn't say; I think it is, though.

Q. It has the appearance of being the same?

A. Yes, sir.

Q. Has the same appearance now that it had then, in a general way?

A. I think so.

Q. You remember quite distinctly seeing them down there, don't you?

A. Yes, sir.

Q. You remember distinctly seeing those stains on the linoleum, don't you?

A. Yes, sir.

327 Q. Were there any other blood stains or any other evidence shown or pointed out to you that you have not spoken of?

A. Some blood stains on the floor, spots in the saloon building.

Q. Whereabouts were they?

A. They were from the south door east toward the billiard table.

Q. Where the body lay?

A. Yes, sir.

Q. That is all you recollect of, is it, what you testified about?

A. I think that is all.

Q. You say you noticed some stains on the south door of the saloon?

A. Yes, sir.

Q. Who called your attention to them?

A. I think McQueen.

Q. Do you remember anything about their appearance?

A. No, sir; I don't.

Q. Couldn't describe their number, size, or location?

A. No, sir.

Q. Except that there seemed to be some stain on the door?

A. Yes, sir.

Q. That is all you remember?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. What was the appearance of the blood stains on the axe handle or stick, as to their being fresh or not.

Q. At that time, I mean, when you saw them?

A. I couldn't tell whether they were fresh or not.

Q. How was it as to the blood stains on the linoleum; did you notice that, as to whether they were fresh or not?

328 A. It was impossible for me to tell whether it was fresh or not.

Q. You were down there on other business. Did you pay any attention to this matter, really, except that your attention was called to it?

A. No, sir; only when my attention was called to it.

Q. You were not interested in the matter?

A. Not in any way.

Cross-examination by Judge CHERRY:

Q. You were not interested in it?

A. Not in this part of it. I was interested in my part of the business.

Q. Didn't you look at this and inspect it?

A. When my attention was called to it.

Q. And exercised your best judgment and recollection to determine what they were, did you?

A. I looked at them and, as I say, I couldn't tell whether they were fresh or not.

Q. You didn't give it just a passing glance; you examined it carefully?

A. Yes, sir; I looked at it.

329 Dr. WYLIE E. FARRABEE, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. What is your name?

A. Wylie E. Farrabee.

Q. Are you a physician?

A. Yes, sir.

Q. Live at Murray?

A. I do.

Q. Do you know of Mrs. Thiede being killed?

A. Yes, sir.

Q. Were you called upon during the night some time to go there?

A. I was.

Q. Can you tell what time of night you were called?

A. After I had dressed and looked at my watch it was twenty minutes to one.

Q. Were you a witness before the coroner?

A. I was.

Q. The same day you were called?

A. Yes, sir.

Q. Didn't you testify before the coroner you were called about one-thirty? Just think the matter over; I want to refresh your recollection.

A. I was under the impression——

Q. Look at that and refresh your memory if you wish.

Judge CHERRY. I want to know what you are offering.

Judge CHERRY. I object to the witness's memory being refreshed by giving him a paper from the hand of the district attorney.

Judge HOWAT. This is his testimony before the coroner's inquest, or what purports to be his testimony; the very same thing counsel undertook to read from in the presence of the jury.

(Objection overruled. Exception.)

The COURT. It may be handed to him simply for the purpose of refreshing his memory.

330 Q. You were a witness before the coroner?

A. Yes, sir.

Q. Do you remember what you testified to as to whether or not it was 1.30 you were called?

A. No, sir, I don't; but my testimony then would be more accurate than now because I have not though' of the matter but little, and if I said 1.30 then it must have been 20 minutes to two when I looked at my watch, instead of 20 minutes to one. I was called probably twen' minutes before I had dressed.

Q. Can you state now as to what time you were called in fact.

A. No, sir; I can't. I have thought the matter over since being subpœn'ed on this trial, and I don't remember the exact time. I thought it was 20 minutes to one I looked at my watch. It may have been twenty minutes to two, and if I testified before the coroner it was thirty after one or about that, that was the correct time and not twenty to one, but twenty minutes to two when I looked at my watch.

Q. You have not seen what purported to be your testimony before the coroner, have you?

A. No, sir; I have not.

Q. You have not examined it?

A. I have not refreshed my memory at all, but if that was my testimony it was more probably correct.

Q. What I hold in my hand and have offered to show you, you have not seen it at all; it has not been handed to you?

A. No, sir.

Q. You say you are not able to state what time in the morning it was really?

A. No, sir; but if I testified it was half after one when I was called, it was twenty minutes to two instead of twenty minutes to one when I looked at my watch.

331 Q. Who came after you?

A. Thiede and Lauenberger.

Q. The old gentleman who has been a witness here?

A. Yes, sir.

Q. About how far do you live from Thiede's saloon?

A. About three-quarters of a mile.

Q. And you were there at that time?

A. At home?

Q. Yes?

A. Yes, sir.

Q. How was the night as to being dark at that time or not?

A. It was dark.

Q. How dark, as to being very dark or a little dark?

A. It is what I would call a very dark night.

Q. Did you go over there?

A. I did.

Q. Where did you find the body laying when you went over there?

A. Near the east end of the saloon.

Q. Was there a light in the saloon at the time?

A. There was.

Q. Can you indicate on that map about where it was—about where the body lay?

A. About on the southeast corner.

Q. How was it, easy or difficult for you to discern the body there when you went over, without the aid of a light, outside?

A. It was difficult. In fact, I had to approach the body before I made out that it was a human form. I saw a mass of something; it was so *fard* I was unable to say it was a human body until I had touched it.

Q. It was so dark?

A. It was so dark.

Q. What distance away could you discern it was a human body?

A. I didn't discern it until I touched it. Lauenberger called my attention to it as we approached, and I saw a mass of something.

332 Q. It didn't attract your attention until you touched it?

A. I couldn't have said it was a human body until I touched it.

Q. Did you find any serious wound upon the body?

A. Yes, sir.

Q. What part of the body?

A. The neck.

Q. What was the nature of that wound?

A. The throat was cut, the head was nearly severed from the body, cut back to the backbone—spinal column.

Q. What was the condition of the defendant when you were called, as to his being drunk or sober?

A. He was not drunk.

Q. What did he do after that, as to drinking, when you went over there?

A. He drank some.

Q. What did he drink?

A. I saw him drink some whiskey.

Q. How often did you see him drink that morning after you went over there?

A. I can not say; he drank quite often and became a little groggy before morning.

Q. He drank so frequently after you went over there that he became groggy before morning?

A. That is, before daylight.

Q. Did you examine the clothing on the person of this woman?

A. Yes, sir.

Q. Did you examine her underclothing or underdrawers?

A. Not carefully; I saw them; I saw the condition they were in.

Q. Did they show any signs of being disturbed as of any person disturbing her underclothing or drawers?

(Objection as leading.)

The COURT. Let him describe what he saw.

Q. State whether or not the drawers had any appearance of being disturbed.

333 (Objection as suggestive and leading.)

The COURT. He can state what he saw, and the condition. He may answer.

(Exception.)

A. They didn't.

Q. Any other part of her underclothing have the appearance of being disturbed?

A. No, sir; they were somewhat disarranged, but no more than you would expect to find in a person who had fallen down, I should judge.

Q. What, if anything, did the defendant say to you as to what his wife said when he found her laying there?

A. He said when he first found her there that he raised her up, and in answer to my inquiry as to whether she said anything or uttered and sound or whether she was dead or not he said she was not, and she said, "Oh, Charley!"

Q. Did you observe any cuts or wounds upon the hands of the deceased?
A. I didn't then; next morning I saw the cut on the thumb, I think.
Q. You mean when it came daylight?
A. Yes, sir.
Q. What was the nature of the cut?
A. A gash; an incised wound of the thumb.
Q. When you were there before the sheriff came did Thiede go away any place; was he any place out of the saloon?
A. Yes; he went over to the house and went in the brewery.
Q. Went over to the house and went into the brewery?
A. Yes, sir; and he went out around the saloon once or twice.
Q. That was before daylight?
A. Yes, sir.
Q. Before the sheriff came?
A. Yes, sir.
334 Q. Was the body of the wife brought in soon after you went over there?
A. About three-quarters of an hour, or a half, I should say.
Q. Was it after the body was brought in he went out and went into the brewery and the house?
A. No, sir; he went in his house afterwards, but he went in his brewery before, and he went to his brewery afterwards, but I don't think he entered it, though.
Q. You say he entered the brewery after you went over there?
A. Yes, sir; before the body was removed.
Q. And he went to the brewery afterwards?
A. Yes, sir.
Q. You don't know whether he went in or not?
A. I don't know whether he entered it; he went to it.
Q. Was he out in the yard any after the body was brought in?
A. Yes, sir.
Q. How long was he absent from the saloon?
A. At any time not over 15 or 20 minutes.
Q. The body was laid on the billiard table in the saloon, was it not?
A. Yes, sir.
Q. How many times did he absent himself from the saloon for 15 or 20 minutes after the body was brought in, before daylight?
A. Every time he was absent it was not as long as that. I said at no time was he absent more than 15 or 20 minutes.
Q. How many times was he absent at all from the saloon after the body was brought in, and before daylight?
A. I should say at least half a dozen.
Q. You didn't know where he was or what he was doing, did you, of your own knowledge?
A. I knew when he went to the house from what he told me.
335 Q. Did you see what he was doing?
A. It was so dark I couldn't see.
Q. So that you don't know anything about where he went or what he did when he went outside, of your own knowledge? From your own observation, you didn't know what he was doing or where he went?
A. I saw him go to the house and brewery.

Q. These two times?

A. Yes, sir; because it was daylight when he went to the brewery.

Q. But before that time, when he had gone out, you didn't know what he was doing?

A. No, sir.

Q. Nor where he was?

A. No, sir.

Q. When did he commence drinking after you went over there; how soon?

A. Soon after he returned. He got to the brewery a little after I arrived.

Q. You went there first?

A. Yes, sir.

Q. And he got there after you?

A. Yes, sir.

Q. And he commenced drinking soon after he came back?

A. Yes.

Q. You can not say how many times he drank?

A. No, sir.

Q. What was his condition as to being a little groggy when the sheriff came there in the morning; was he under the influence of liquor at that time or not?

A. He appeared so; acted so.

Q. State whether there was any blood there or not.

A. There was blood.

Q. How large was the pool of blood? Describe to the jury.

A. There was blood all over her dress, and hair and face and there was blood on the ground—clotted blood.

336 Q. How much blood on the ground?

A. Quite a lot.

Q. How far down her dress did the blood extend; can you say?

A. There was blood all the way down to her knees.

Q. How was she laying, as to laying on her face or back?

A. On her back.

Q. What did you see, any place near where the body lay, as to whether there were indications of a struggle?

A. I didn't then; I saw it when it became daylight.

Q. Describe to the jury the appearance of that place.

A. The place where the blood was?

Q. Where the struggle was. Describe what it looked like.

A. There was some blood there, and I should say it was about six feet east of where she lay, and there were evidences of a scuffle there; the soil was torn up by the feet. The circumference of the place where this scuffle occurred or evidence of a scuffle was, I should say, about three or feet in diameter. Of course it was not quite a circle, but in the center of it there was more evidences of a scuffle than anywhere else.

Q. Who called the sheriff? Do you know who gave directions to the sheriff to be called?

A. I wrote Mr. Weiler and requested him to telephone for the sheriff.

Q. State whether or not the defendant gave you any directions to call a sheriff.

A. He did not.

Q. Did he make any suggestion of that kind, to call any officer or not?
A. I made the suggestion; he did not object to it.
Q. Did the deceased have on any head wear, hat, bonnet, or cap of any kind?
A. No, sir; I think not.
337 Q. Anything by way of a wrap.
A. She had on a cape, I should call it, on her shoulders.
Q. But no head covering?
A. No, sir.
Q. How was the night as to being cold or otherwise?
A. It was cool.
Q. Could you state from the examination you made of the body of the deceased how long she had been dead?
A. My opinion you mean?
Q. Have you an opinion on the subject?
A. I have.
Q. How long, in your judgment, had she been dead at this time?
A. I should say between one and two hours.
Q. Can you state it any nearer to the time than that, any more definitely?
A. No, sir.
Q. Are you positive that was the time or not? Is it simply a matter of opinion in regard to which you might be mistaken?
(Objection as tending to discredit his own witness.)
(Objection overruled. Exception.)
A. It is a matter of opinion, and I may be mistaken.
Q. What was the condition of the extremities as to being cold or warm at the time you went there?
A. They were cold.
Q. What was the condition of the body, of the chest or abdomen, as to being warm or cold, or did you examine as to that?
A. I examined the abdomen.
Q. Was it warm or cold?
A. Cold.
Q. Any heat remaining?
A. No, sir.
Q. What did Thiede state was the cause of her death? Did he state anything at that time?
338 A. When I asked him at first how he accounted for it he seemed to be of the opinion that it was suicide; that was his impression.
Q. What else did he state; did he assign any other reason for her death than that?
A. He did after I had shown him in my opinion it was impossible for her to have committed suicide.
Q. What did he say then?
A. Then he advanced the opinion of some member of the industrial army having killed her; cut her throat.
Q. Anything else, anybody else he said could have done it, or might have done it, or probably did do it?
A. No, sir.

Q. Did he say anything in regard to anybody coming there to buy liquor during the night?

A. Yes, sir.

Q. Who did he say came there to buy liquor?

A. He said two Swedes came about twelve o'clock.

Q. Did he say what they bought?

A. No, sir—I believe he did, too; I think he said it was beer.

Q. To refresh your recollection, didn't you testify before the coroner he sold them some whiskey?

A. I think not. I don't think I did as to those two Swedes.

Q. What did he say about selling whiskey that night?

A. I saw him sell whiskey to a man.

Q. When was it you saw him sell whiskey to a man?

A. Immediately after he returned from my office. The gentleman came with him and entered the saloon with him.

Q. Was it before the dead body of his wife had been brought into the saloon?

A. It was.

Q. When his wife was lying outside dead he went behind the bar and sold whiskey to a man?

A. He did.

339 Q. Over the counter?

A. Yes, sir.

Q. How did he sell it?

A. By the bottle.

Q. Do you know the man to whom he sold it?

A. I know he was a member of the industrial army.

Q. And he sold him this liquor over the bar?

A. Yes, sir.

Judge CHERRY. What are you asking that three or four times for?

Judge HOWAT. I didn't know whether it was possible or not.

Q. Do you know where the key to the house was at this time?

A. Yes, sir; it was in Mrs. Thiede's pocket.

Q. When was it taken from her pocket, if at all?

A. I removed it after she was brought in.

Q. After she was laid upon the billiard table; at whose request?

A. At Thiede's.

Q. What did he say to you in regard to getting the key for him?

A. He said he wanted to get into the house and see if he could find any evidence there that would explain her death.

Q. Did he say anything to you where you would find the key?

A. Yes, sir; he told me it was in her pocket.

Q. He told you the key to the house was in her pocket, and for you to get it for him?

A. He requested me to get it.

Q. You got it and took it out of her pocket and gave it to him, and he went to the house?

A. Yes, sir.

The court gave the customary admonition to the jury, and adjourned until 2.00 p. m.

340 2.00 P. M. TUESDAY, *Oct. 16th*, 1894.

Q. You said Thiede sold a man whiskey that morning; when did that man come there with reference to the return of Thiede from Murray when he came after you with the old man Lauenberger?

A. He came with him.

Q. Thiede and this man came together?

A. Yes, sir.

Q. Did Thiede say anything about where he met this man and what he brought him there for?

A. He told me he met this man between the bridge that crosses the creek just south of Murray and Harry Haynes' store.

Q. What street?

A. State street.

Q. And he asked him where he was going?

A. Thiede asked this man, and he told him he was going down to get something to drink.

Q. Down where?

A. To the saloon.

Q. In Murray?

A. Yes, sir; and Thiede said to him, they are closed up down there; come and go down to my place.

Q. Did Thiede say whether they came together from State street or not?

A. No, sir; he didn't say.

Q. But they did come there together?

A. They came in the saloon together in company.

Q. Thiede and this man?

A. Yes, sir.

Q. How long was it after he came he sold him the whiskey over the counter?

A. At once. Thiede stepped behind the bar and asked the man, said he, What do you want? Said he, I want some whiskey. And he said to him, Where do you belong? He said, I am a member of the industrial army. And he handed him a pint of whiskey, I think a pint

341 flask, and the man paid for it and walked out.

Q. How far is it from the saloon to the point where Thiede said he met this man on State street, in your judgment?

A. A little over half a mile, I suppose.

Q. When this man said he belonged to the industrial army, did Thiede say anything to him about his wife being dead, lying outside?

A. He did not.

Q. Did he say anything after this man went away about this man with reference to his wife's death?

A. Yes; after the man was gone I asked Thiede who he was, and he said he didn't know; and I asked him if he would know him if he saw him again, and he said he would not; and I told him that I would; that I had taken a mental picture of the man so as to identify him.

Q. What did Thiede say then?

A. He didn't say anything then further regarding this man.

Q. Did he at any time after that in connection with the killing of his wife?

A. Later, after I had shown him it was impossible in my opinion for his wife to have committed suicide, he said, Then some one did it with the intention of rape, and he said, That was the son of a bitch who came in here and bought that whiskey.

Q. This man who came with him?

A. Yes, sir.

Q. Did you notice that man's clothing as to whether or not there were blood stains on it that night or not?

(Objection as incompetent, immaterial, and irrelevant.)

Judge HOWAT. I have a right to show this man was not guilty; that there wore no evidences of guilt about his person.

342 (Objection overruled. Exception.)

Q. Did you observe whether there were blood stains on this man's clothing?

A. I didn't see any.

Q. State whether you saw this same man next day?

A. I did.

Q. Where?

A. Where the industrial army were camped.

Q. Did he have any blood stains on his clothing at that time?

A. He didn't.

Cross-examination:

Judge CHERRY. We move to strike out all the testimony the witness has given in reference to the person who bought whiskey in the saloon in regard to his having blood marks on his clothing either in the saloon or next day.

(Motion overruled. Exception.)

Redirect:

Q. Have you, upon reflection, since adjournment arrived at any conclusion as to what hour you were called that morning?

A. Yes, sir; it was 1.30 instead of 12.30.

Cross-examination:

Q. In what way were you awakened when you were called to go down there?

A. By knocking on the door, and I told my clerk to go and open the door and see who was there.

Q. The outer door on the street?

A. Yes, sir; and he did so, and Mr. Thiede came right through the store into my room where I was sleeping. He came in ahead of the boy, the clerk; following him was the old German, Lauenberger.

Q. Were you still in bed?

A. I was in bed, and Thiede appeared to be very much excited,

343 and came to my bed and pulled the bedclothing down, and I asked what he wanted. I didn't recognize him.

Q. What did he say?

A. He said, Oh, my wife's throat is cut; and I gathered from what he said he wanted me to go at once, and I didn't recognize him, but when the German gentleman came in I recognized him, and then afterwards, looking at Thiede closer, I recognized him.

Q. Was there a light in your room when he first came?

Yes.

Q. When he first rapped on the outer door did you have a light burning?

A. I don't think I did.

Q. You think the light was made after the rap on the outside door?

A. Yes, sir; I know the lights were out when the first rap was on the outside door, and I think it was not lighted till he came in my room.

Q. How much conversation passed between you and Thiede there; how much time did it occupy?

A. Not more than three or four minutes. As soon as I learned what he wanted I told him I would go at once.

Q. You say he seemed excited and agitated?

A. Yes, sir.

Q. In what tone of voice did he speak?

A. A little higher than ordinary; in a kind of excited way.

Q. How did you judge him to be excited?

A. By walking into my room and pulling my bedclothing down and shaking me and telling me he wanted me.

Q. Did you notice any gestures being made?

A. No, sir.

Q. Didn't notice what he did with his hands?

A. His hands were moving, but I don't know of any particular gestures.

344 Q. What sort of gestures, if any, did he make with his hands?

A. It appears to me, sir, his hands were moving something like this, in an ordinary manner.

Q. You got up while he was there and dressed, did you?

A. No, sir; I got up and he told me he wanted to telephone to Sandy for some of his family relatives, and asked how he could do it, and I told him to go over to the main office over at Saunder's store.

Q. Where is that office with reference to your office?

A. It is probably one hundred yards south of me across the street. I told him if he couldn't get in there to go to Harry Haynes' and probably Mr. Ahlburg, Harry Haynes' principal clerk, would allow him to use his private telephone. He went to Mr. Haynes' and returned about the time I completed dressing and told me he was unable to get entrance into the store, and I, after getting a few instruments, said, come along and I will call Ahlburg up myself; and I awakened Ahlburg.

Q. Where was he at that time?

A. In Haynes' store sleeping.

Q. Sleeping in the store?

A. Yes, sir; he admitted Mr. Thiede.

Q. Did you and Thiede go together?

A. Yes, sir; that is, the second time. He went once before and failed to get entrance and I left him there.

Q. When you went there how much time did it take to get Ahlburg up?

A. No time; he got up at once.

Q. When you rapped?

A. When I called him and told him who I was, he got up at once.

345 Q. Was he dressed?

A. I think he had on his pants, he didn't have on his coat and vest.

Q. Then you left Thiede there and proceeded with the old German over to Thiede's place?

A. Yes, sir.

Q. Did you meet anyone as you went over there?

A. I did.

Q. Where?

A. Midway between the Germania smelter and State road I met a man.

Q. Which way was he going?

A. Towards Murray. I addressed him. I took him first to be Tom De Groot and I said, Hello Tom, is that you? and he turned around and said, No, and I hurried on.

Q. You say it was quite a dark night?

A. Yes, sir.

Q. I will ask you whether there was any light shed over any part of that country by reason of the smelter lights; they run all night do they not?

A. Yes, sir. No, sir; you could see the lights, but they didn't light up anything over to the saloon.

Q. Anything on the way over going down the hill or before you got to the saloon; did it cast any light on the ground or tend to make it lighter there than if the smelters had not been burning?

A. Probably it did until I reached the road running north and south. I don't think there was any light as far as that.

Q. Whenever the bank would come out it would cut off the light?

A. Yes, sir.

Q. There was a light in the saloon when you got there?

A. Yes.

Q. A good light.

A. Very good.

346 Q. What light in the saloon?

A. A double lamp over the billiard table and a single hand lamp on the counter.

Q. When you and the old German got there first I understand he showed you where the body lay.

A. Yes, sir.

Q. You could see enough to see that there was somebody lying there, couldn't you?

A. There was something there.

Q. If your attention had not been called to it you could not have told whether it was a person or something else?

A. No, sir; it was so dark I would have walked right by.

Q. But you could see there was something there more than the ground?

A. Yes, sir; when I got close to it, probably within five or six feet, I could see there was something. I couldn't see it before then.

Q. Did you take hold of the body when you first got there?

A. Yes, sir.

Q. What part did you touch?

A. An arm.

Q. Run your hand up under the clothing in any way?

A. Caught it along by the wrist.

Q. Is that the only place you touched the person?

A. At that time, yes, sir.

Q. What else did you do with reference to the body while you were there?

A. After that, and finding the body cold, I told the German, She is dead, and he replied something in German.

Q. Never mind.

A. I couldn't understand anything he did say, and I don't suppose he understood what I said, but we proceeded in the saloon.

347 Q. Was the saloon unlocked?

A. The west door was; the door by which we entered.

Q. Did you try the south door to see if it was locked or not?

A. We didn't try that.

Q. The west door was not locked?

A. No, sir.

Q. Was it open?

A. No, sir.

Q. Just closed?

A. Yes, sir.

Q. What then?

A. We got the hand lamp on the counter and started to examine the body more closely. As we came out of the saloon and turned on the road running east and west around the corner the wind blew the lamp out and we returned to the saloon then. I tried to make him understand I wanted a lantern, and while I was trying to make him understand Mr. Thiede and the other gentleman came in.

Q. Which door did they come in at?

A. The same door; the west door.

Q. Did you say anything to Thiede about the lantern then?

A. Yes, sir; I asked him if he didn't have a lantern, and he said, Yes; plenty of them; but he seemed to be so excited he couldn't tell definitely where they were, and he told the old German to look around different places, and told him to go in the brewery and see if he couldn't find one, and the old German failed to secure a lantern and he returned, and I sent him around among the neighbors to see if he couldn't get a lantern, and he visited four or five houses and failed to get a lantern, and when he returned and reported he was unable to get one, Mr. Thiede said, I

348 have lanterns, plenty of them, and went into the brewery and came out with a lantern.

Q. Is that the time he went into the brewery that you spoke of in your direct testimony?

A. Yes, sir.

Q. That is the purpose for which he went in?

A. Yes, sir.

Q. Did you go out and see where he went?

A. I stood on the west end of the saloon.

Q. Had the south door of the saloon been opened up to that time, do you remember?

A. No, sir; I think not; I am sure not.

Q. Did you see who went into the brewery?

A. Yes, sir.

Q. Who went in, both of them?
A. Yes, sir.
Q. How long did they remain in?
A. Not over five minutes.
Q. Did they come out with a lantern?
A. Yes, sir.
Q. Was it lighted when they came out?
A. No, sir; they came into the saloon. We had trouble in getting it to work before we succeeded in lighting it.
Q. Then you went and looked at the body?
A. Yes, sir.
Q. Who went with you?
A. Thiede and the German, Launberger.
Q. All went around there?
A. Yes, sir.
Q. What did you do then?
A. I examined her more closely and I saw what position she was in and the nature of the cut, and observed the condition of the blood, and then we looked around to see if we couldn't find some weapon or evidence by which we could say how she came to her death.
Q. Did Thiede look around with you?
A. Yes, sir.
Q. He was standing and walking around with you?
A. Yes, sir.
Q. You had a dim light?
A. Yes, sir; a very dim light; it hadn't been cleaned for a long time.
349 Q. Did you handle the body any more then?
A. Yes, sir.
Q. Was it cold then?
A. Yes, sir.
Q. What part did you handle?
A. The upper extremity, the arm.
Q. Handle the face any?
A. No, sir; I didn't touch the face.
Q. How long did you spend there before the body was removed to the saloon?
A. Probably twenty or thirty minutes.
Q. Then who took the body into the saloon?
A. Lauenberger and myself.
Q. I will ask you as to whether anything was said by you to Thiede about removing the body, as to whether he should help or not.
A. I don't remember.
Q. Didn't you say you and the old man would take her in, that he was excited, or words to that effect?
A. No, sir.
Q. Do you remember that?
A. No, sir.
Q. Which way did you take the body into the saloon?
A. Through the south door?
Q. Who opened that door?

A. I don't know, sir.
Q. You don't remember?
A. No, sir.
Q. Do you remember whether it was the door opened when you went out?
A. I think it was open when we went out with the lantern; I think we went out the south door.
Q. And you came in that door and put the body on the pool table, as I understand it?
A. Yes, sir.
Q. Did you make any further examination after you got in the room?
A. Yes, sir.
Q. You there had a good light, did you not?
A. Yes, sir.
350 Q. Right over your head over the pool table?
A. Yes, sir.
Q. Did you make an examination there?
A. Yes, sir.
Q. Did you remove her clothing?
A. I raised her garments, her dress, underclothes.
Q. Turned it back?
A. Yes, sir.
Q. Up toward the head?
A. Yes, sir.
Q. Are you able to say how far down the blood extended on her clothing?
A. All the way down, sir; blood all over her.
Q. Was there any on that cape?
A. Yes, sir; a good deal of it.
Q. Pretty well saturated with blood, was it?
A. Yes, sir.
Q. There was blood all around where she had fallen, apparently?
A. Yes, sir.
Q. On the front part of her person was there blood?
A. Yes, sir.
Q. Any blood on the back part of her person?
A. I didn't notice; I didn't examine her back.
Q. Do you know where the clothing is that was on her body at that time?
A. I do not.
Q. Do you know what was done with it?
A. No sir.
Q. Were you there when she was undressed?
A. I was not.
Q. Do you know who took charge of the body when you left?
A. I do not; I don't think there was anyone had absolute charge of it.
Q. Had the coroner come down before you left?
A. No, sir; I left before he did.
Q. The sheriff was the only official there that you know of when you left?

A. Yes, sir.

Q. I will ask you if you didn't get considerable blood on your hands in handling that body and making that examination?

A. No, sir.

351 Q. You didn't—in turning the clothes up and looking at the wound—didn't get blood on your hands?

A. Not enough to require washing.

Q. Didn't you wash your hands?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. You don't remember washing your hands after you handled the body, before daylight?

A. No, sir; I didn't wash them until I returned to my office.

Q. You would not say he was under the influence of liquor when he came to your office?

A. I would not.

Q. How often do you think he drank after you came into the saloon while he was there?

A. Probably four, or five, or six times; something like that.

Q. Would you say that many?

A. Yes, sir.

Q. Have you a distinct recollection of how many drinks he took that morning?

A. No, sir; I haven't. About the only way I can remember it is that every time he took a drink he would offer me a cigar, and I am aware I smoked quite a number of cigars that night.

Q. Did anyone drink with him?

A. Lauenberger took one drink with him that I remember of.

Q. When was that?

A. Just before he went to Weiler's with a note.

Q. To refresh your memory, I will ask you if, in testifying before the coroner, you were asked there how many drinks he took?

A. I think I was.

Q. Do your remember your testimony there?

A. I think I can, since seeing you during adjournment. Judge

352 Cherry, by his kindness, allowed me to look over my testimony before the coroner's inquest.

Judge HOWAT. That is a thing he would not let you look at in the court room, is it?

A. I didn't know; I didn't get to see that.

Q. You asked me the privilege of doing so, didn't you?

A. I did.

Q. I will ask you if this question was asked: You said that he had been drinking after he came upon the scene. Do you remember whether that question was asked or not?

A. Yes, sir.

Q. You remember your answer?

A. I think it was three or four times.

Q. Wasn't this your answer: No, heavily; he took two or three drinks, to my knowledge. Do you remember whether that was your answer or not?

A. No, sir; I don't; I think he drank more than three times.

Q. I will ask you if you remember that this question was asked you at that time: As he took those drinks did he seem to be under the influence of liquor or not? Do you remember that?

A. Yes, sir.

Q. Do you remember what your answer was now?

A. I remember the answer I made before the justice or coroner, and that was, he became a little groggy before morning.

Q. Didn't you answer, Well, towards morning, he did some. Do you remember whether that was your answer?

A. I think that was about it.

Q. Wasn't this question asked you: He kept drinking right along until morning?

A. Yes, sir.

353 Q. What was your answer?

A. I think it was, he did not.

Q. Wasn't this your answer: Not steadily; he took three or four, two or three, I can't remember which. Did you make such an answer as that to the coroner?

A. I think I did.

Q. Now, what do you say as to the number of drinks he took in your presence?

A. I would say four or five.

Q. You think that is your recollection?

A. Yes, sir.

Q. That is, from the time you got there until you went away?

A. Yes, sir; until he was arrested.

Q. What time did you leave the premises, about?

A. Between seven and eight, I judge, in the morning.

Q. Did he drink any after the sheriff came, do you know?

A. No, sir.

Q. Didn't he drink just about the time the sheriff came?

A. No, sir; I don't think he was.

Q. Do you remember where he was when the sheriff came up; what part of the saloon he was in?

A. He was in the part nearest to the west end of the saloon. My recollection is that he was out in the saloon proper; he was not behind the counter.

Q. When the sheriff entered?

A. Yes, sir; the sheriff entered through the door in the west end.

Q. Did you hear any conversation there?

A. No, sir; I did not; none that I can remember. I know there was some conversation, but I don't remember distinctly anything that was said.

Q. Did the conversation commence as soon as the sheriff entered?

A. Yes, sir.

354 Q. The sheriff came right in and the conversation began then?

A. Yes, sir.

Q. Where were you standing at that time?

A. Standing probably in the east half of the saloon, and they were near the west end, just about there, about west of the bar which runs across the west end.

Q. What is called the lunch counter?

A. Yes, sir.

Q. There is a plat; indicate where Thiede was and where you were.

A. Near the front of the bar; the sheriff entered through the west door. I was sitting on a keg down about there, near the south window.

Q. Did you hear Thiede say to the sheriff, I killed my wife last night?

A. I didn't.

Q. Can you remember about the time Thiede went down to the house that morning, as to being daylight or dark?

A. No, sir; it was not daylight. It was beginning, I suppose what you would call twilight in the morning.

Q. Just beginning to break.

A. Yes, sir.

Q. Not as dark as when you first got there?

A. No, sir.

Q. You had been in and out of the saloon during the morning you were there, had you?

A. After taking Mrs. Thiede in the saloon I don't remember being out more than two or three times.

Q. But you would notice any changes in the condition of the light, going in and out. Did you observe that at the time he went it was lighter than when you came there first?

A. Yes; it was lighter.

Q. Who walked out two or three times, you or Thiede?

A. I.

355 Q. You say you found the key of the house in the pocket of the deceased?

A. Yes, sir.

Q. What else?

A. A pocket handkerchief.

Q. Did you take it out?

A. Yes, sir.

Q. What did you do with it?

A. Put it in my pocket.

Q. Have you got it?

A. No, sir.

Q. What did you do with it finally?

A. Finally, I delivered the key—I believe it was to some of Thiede's relations, I believe, Mrs. Smith.

Q. What did you do with the pocket handkerchief?

A. I don't remember what I did with it.

Q. Did you notice whether there were blood stains on it or not?

A. There were none.

Q. How did you come to get the key and handkerchief out of her pocket? State what was said and done in reference to that.

A. Thiede had been over to the house, and had been unable to get in; that was before he came for me.

Q. He told you so?

A. Yes, sir.

Q. You didn't see him?

A. No, sir. He told me his wife had the key in her pocket, and after bringing her in the saloon and placing her upon the billiard table, I can't tell exactly whether it was at his request or at his suggestion that it was in her pocket. Anyway, I removed it and put it in my own pocket, and kept it until along about the beginning of daylight, when he asked me to give it to him to go to the house.

Q. He went to the house?

A. Yes, sir.

Q. How long was he at the house?

356 A. A very short time. He was longer going and coming; several minutes in going, because he kept calling to me to go with him.

Q. You declined to go?

A. Yes, sir; but he was not in there very long.

Q. I will ask you if he didn't say to you that the key must be in her pocket, or words to that effect?

A. No, sir; he said it was in her pocket.

Q. Did he state to you, the key is in her pocket?

A. Yes, sir.

Q. What w's his language, do you remember?

A. It was this: I asked him when he told me he couldn't get in the house, I said, Why? and he said because his wife had the key in her pocket.

Q. The house was locked, he told you that?

A. Yes, sir; that he had to break open a window, I believe, to get in to get his hat to come for me.

Q. Hat or coat?

A. Hat and coat, I believe.

Q. Did he have a coat on when he came for you?

A. Yes, sir.

Q. Did he have a coat on all that morning?

A. Yes, sir.

Q. Didn't take his coat off while he was there?

A. No, sir.

Q. Wasn't in his shirt sleeves?

A. No, sir.

Q. It was chilly?

A. Yes, sir.

Q. Was there a fire in the saloon?

A. No, sir.

Q. He had on the same coat when you left him in the morning that he had on when he came for you?

A. Yes, sir.

Q. You say you wrote a note and sent it over to Mr. Weiler by the old German?

A. Yes, sir.

Q. Did you consult with Thiede any before doing so?

357 A. No, sir; the way the note came to be written Mr. Thiede kept saying that he must get word to his people in Sandy, and he said to me, you must go for them. I told him I wouldn't do it; he would have to send someone else. And after talking the matter over I

told him I would write a note to Henry Weiler and get him to send one of his men down to notify his relatives or her relatives, who reside in Sandy.

Q. Who first suggested about sending for the sheriff, you or Mr. Thiede?

A. Mr. Thiede did not suggest it. I wrote the note, and after writing it read it to him, and told him it was a case for the sheriff to investigate; that we both seemed to be without any evidence of how she came to her death—any positive evidence—and it was a case for the sheriff; and I wrote on the note requesting Mr. Weiler to come down with the local constable, Cahoon, and to telephone for Sheriff McQueen at once.

Q. What did he say to that?

A. I don't think he made any comment.

Q. You don't know whether he expressed a willingness or not?

A. No, sir; he didn't object to it.

Q. Do you remember whether he said, that's all right, or words to that effect?

I think he said, that's all right; he certainly didn't object to it. I asked him and said, why not send for the local justice at first, and he said he didn't know anything, or something of that purpose.

Q. Then, when the question of the sheriff was mentioned, he agreed to it?

A. He did; he didn't object at all. I had written the note before he knew what it contained, the contents of it.

358 Q. You say there was a man came over, some stranger, with him when he returned.

A. Yes, sir.

Q. How long did that man remain there?

A. Not more than five minutes in the room.

Q. Did he make any remarks or any inquiry about the homocide?

A. No, sir.

Q. Was there anything said about it?

A. Not a word.

Q. Then you were present when he came in?

A. I was.

Q. You have given all the conversation you remember that took place between Thiede and the man in your presence?

A. Yes, sir.

Q. He asked him where he belonged, I believe you stated?

A. Yes, sir.

Q. Did you notice whether Thiede looked at him closely or not?

A. I didn't.

Q. Did you look at him closely?

A. I did. I asked Thiede, when the man had gone, did he know the man, and he said no. I asked him if he would know him again if he saw him, and he said no.

Q. You say you saw that same man in the industrial camp next day?

A. Yes, sir; I identified him for the constable.

Q. Did he seem to be a member of the organization?

A. He was, so his captain told me.

Q. Did you look at the body of Mrs. Thiede after daylight any?

A. No, sir.

Q. The examination you made was made on the pool table under that double lamp?

A. Yes, sir.

Q. Did you notice any bruises on her face or head?

A. No, sir; her face was clotted with blood all matted together.

359 Q. You didn't wash it off?

A. No, sir.

Q. Didn't attempt to remove any blood stains from her person?

A. No, sir.

Q. I will ask you if you found the knife in the saloon that evening?

A. I did.

Q. What sort of a knife was it?

A. A butcher knife with a dark handle, I believe; a blade I suppose six or eight inches long and the point of it was broken.

Q. Where did you find it?

A. Behind the counter on the south end under the counter on either a barrel or a box, I am not positive which, covered up with some newspapers.

Q. Which counter, the bar or lunch counter?

A. Lunch counter.

Q. Newspaper over it, you say?

A. Yes, sir.

Q. What did you do with that knife?

A. Put it in my pocket and kept it until Mr. Weiler and Cahoon came and then gave it to Weiler to examine, and I think he kept it.

Q. Did you examine it in the morning with him?

A. Yes, sir.

Q. Did you discover any blood stains on it?

A. I didn't.

Q. What did Weiler do with the knife?

A. I don't know.

Q. Did you see what he did with it?

A. No, sir; I left Weiler there.

Q. Was Montgomery there?

A. Yes, sir.

Q. Did he look at it, too, do you remember?

A. I think he did.

Q. All looked at it and examined it?

A. Yes, sir.

Q. It was a dark-handled butcher knife with part of the point broken off?

A. Yes, sir.

Q. You would recognize that knife if you would see it again?

A. I think so.

360 Q. I will ask you if that is the knife?

A. I should say that was the knife.

Q. What time did you find it?

A. I had probably been there an hour or an hour and a half when found that knife.

Q. Were you looking around to see what you could find?

A. Yes, sir; to see what evidence I could find.

Q. Was that the object of your getting that knife and putting it in your pocket?

Judge HOWAT. We don't contend that is the knife.

Q. What did you put it in your pocket for?

(Objection as immaterial and not cross-examination.)

Q. What was Mr. Thiede's manner and condition that morning after you got to the saloon?

A. He appeared to be very much excited; he was walking from one end of the saloon to the other and calling his wife by name; and he said, She is dead, she is dead, and my little girl is away; and he wanted her and he wanted his people in Sandy. That is about some of his expressions. Then he also apologized somewhat for his hasty manner in arousing me.

Q. I will ask you if he acted any different from what a man naturally would who had lost his wife under those circumstances?

The COURT. He may state how he acted.

Judge HOWAT. We object as incompetent.

Judge CHERRY. This is a physician who undoubtedly has more knowledge on that subject than the ordinary man.

The COURT. He may answer what his appearance was. Let him answer the question.

361 A. Some men would act different from others; it is a very difficult question. I don't know hardly how the average man would act. I have stated that he appeared to be very excited.

Q. Was he expressing any emotions of grief or sorrow?

A. I have just stated that he was walking up and down the floor gesticulating and saying, Oh, my wife is gone; she is dead, and my little girl is away, and I must have my people at Sandy.

Q. Did you notice whether he cried any?

A. No, sir; he did not.

Q. Didn't shed tears?

A. No, sir.

Q. That you noticed?

A. Yes, sir.

Q. Was there any rigor mortis, any stiffness of the body when you got there?

A. It was perceptible in the arms.

Q. How was the lower jaw, did you notice that?

A. I didn't. It was not retracted.

Q. Do you know what time it was when you got to Thiede's premises?

A. I should say about ten minutes to two; it was twenty minutes to two when I looked at my watch after dressing, and I don't think I was more than ten minutes going down there at the outside.

Q. Twenty minutes to two when you started?

A. Yes, sir.

Q. Did you look at your watch more than once?

A. No, sir; just after I dressed.

Q. You stated it was half past one when you were called?

A. Yes, sir.

Q. Did you look at your watch?

A. No, sir; I am estimating that. I looked at my watch after I dressed.

362 Q. Was it about the time when you started for Thiede's that you looked at you watch?

A. Yes, sir.

Q. Was that after you got Harry Haynes's man up?

A. No, sir; I went over on my way.

Q. Called there and aroused the clerk?

A. Yes, sir.

Q. Twenty minutes to two then?

A. Yes, sir.

Q. You think it was ten minutes to two when you reached there?

A. Yes, sir.

Q. Which way was the head of the deceased lying?

A. Toward the south.

Q. Directly south?

A. Almost.

Q. It didn't point toward the saloon then?

A. Her body was lying parallel with the saloon.

Q. Did you notice whether there was blood on Thiede's hand when you came into the saloon?

A. No, sir.

Q. If they had been very bloody would you have noticed it?

A. Very probably I should.

Q. You say you looked over the ground after daylight east of the saloon?

A. Yes, sir.

Q. You saw what you supposed to be evidences of a struggle further east than where the body was found?

A. Yes, sir.

Q. Can you give any estimate of how much further east?

A. Probably six or eight feet.

Q. Was there any blood there that you could see?

A. Yes, sir; but not as much as in the other pool.

Q. Did you notice any leading from where that struggle was, leading to where the body was found?

A. Yes, sir.

363 Q. In what quantities?

A. Drops; there was no pool of blood in between; there were drops; the ground was discolored.

Q. I will ask you if there was any dripping of blood from the body, as you carried it in, so as to stain the floor of the saloon to any extent?

A. I don't know, sir; there was some drops on the floor in the morning. It may have dropped as we carried her in; it may have dropped from her clothes as we carried her in.

Q. Did you notice whether any ran off her person?

A. I didn't notice; I put some bed clothing on the pool table and covered her up. I didn't look at the body any more after making a superficial examination of her person.

Q. What did you put on top of the billiard table?

A. Some blankets or quilts and a sheet I took off the cot behind the lunch counter, and I covered her with the sheet.

Q. Wasn't there an oilcloth laid on the pool table first?

A. I believe there was; I wouldn't be positive.

Q. You covered her with a sheet?

A. Yes, sir.

Q. Where did you get the sheet?

A. Off the cot behind the lunch counter.

Q. Was there more than one sheet on that cot?

A. I think there were two; one immediately underneath her covering over this oilcloth and quilt, I believe.

Q. I mean on the cot, was there more than one sheet on the cot?

A. Yes; I think there were; both these sheets were removed from the cot.

Q. Did you notice the clothing of the deceased, as to whether they were soiled or not?

A. They were soiled.

364 Q. What with?

A. Blood; and there was some mud and dirt that was more on her person—her knees.

Q. Did you notice her shoes?

A. Yes, sir; there was some mud on the tops of her shoes.

Q. Some mud?

A. Or dirt.

Q. That adhered to it?

A. Yes, sir.

Q. Did it have the appearance of having been put on recently?

A. Yes, sir.

Q. Or was it dry?

A. It was not dry when I examined it.

Q. Looked like it was fresh?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. You mentioned something about demonstrations of sorrow, and wailing, and the loss of his wife and absence of his child. State whether that continued during the time the man was there buying whiskey, or whether he suspended his demonstrations of sorrow during that time.

A. There were no demonstrations of sorrow at that time; he made no remark about his wife.

Q. He didn't commence demonstrations until after the man bought the whiskey and had left?

A. Yes; some time afterwards, after I sent the old German with a note, before he began pacing the room and bewailing his loss.

Q. He wanted to telephone to his wife at Sandy?

A. Yes, sir.

Q. Do you know of any relatives his wife had there anywhere in the neighborhood?

A. I don't know of any.

Q. Is that the note you wrote to Weiler?

A. Yes, sir.

Q. Read it to the jury.

(Objection as incompetent and immaterial.)

The COURT. He may read it.

(Exception.)

365 A. "Dear Henry: Mrs. Charles Thiede has been brutally murdered; her throat has been cut. I want you to send Frank to Sandy after Mr. C. E. Smith, druggist, and Martin Pearson. Telephone to the sheriff; send word to Albert Cahoon. I want you to come here; come, Henry, for I am alone. Say nothing to your wife, for she is sick. I am in Thiede's saloon; come promptly; send messenger. Dr. Farrabee."

Q. Who are Smith and Pearson referred to; what relatives of Thiede?

A. I don't know, sir; but I believe Smith and Pearson both married Mr. Thiede's sisters.

Q. Did Thiede direct you to have them sent for?

A. He did.

Q. Smith and Pearson?

A. Yes, sir.

Q. But he didn't make any suggestion about the sheriff; you wrote that?

A. I did.

Q. Without any suggestion from him?

A. Yes, sir.

Q. You and Lauenberger carried this woman in. How did you carry her; stretcher, or just take hold of the person?

A. We took one arm underneath her shoulders and the other underneath her back, lower down under her legs.

Q. How high was she from the ground when you were carrying her?

A. Probably the height I am, with my arms something like that.

Q. Did your clothing become bloody from doing that?

A. Not very.

Q. How much, if any?

A. Very little; I looked next morning, and I had a little stain on my coat; the blood was clotted.

366 Q. At this time was the blood in such a condition that you would expect it to run in drops? Would you expect blood to drop from the body of this woman?

A. I wouldn't, unless some of it had been under her that the air had not got at.

Q. If it was cold wouldn't it coagulate?

A. The blood in contact with the air.

Q. Did these drops you saw look as if the blood had dropped when it was in a liquid state?

A. It did.

Q. You say you met a man. Do you know who it was you met?

A. On my way down?

(Judge Cherry objects to going over that.)

The COURT. He mentioned that.

Q. Do you know who it was you met?

A. No, sir; I didn't recognize him.

Q. I understood you to say you couldn't see the body to determine whether there was anything there at all until you got within about five feet of the body?

(Objection as improper and out of order in this trial.)

The COURT. He may answer.

(Exception.)

A. No, sir; I didn't see anything until I got within five or six feet of it; then I saw a mass, a pile, or something; I couldn't say it was a human body at that distance.

Q. When was it Cherry showed you your testimony before the coroner?

A. During adjournment.

Q. How did he come to do that? Was he talking to you about your testimony?

A. Yes, sir; I had spoken to Mr. Cherry some days ago and expressed a wish that I might be able to look over my testimony in order to
367 refresh my memory regarding some facts, and after adjournment I was thinking over the matter of the time when I was called and I asked him if I couldn't see my testimony and he told me yes, to come to his office.

Q. So that you went to his office?

A. Yes, sir.

Q. Did he talk about the case to you to-day in his office?

A. He read the testimony over to me that I gave.

Q. All of it?

A. Very near through; he skipped a little. And after that he asked me one or two questions regarding the case.

Q. You went to his office after you had given your examination in chief and after the cross-examination had commenced, at his invitation?

A. Yes, sir; but his invitation was based on my request to see the testimony.

Q. Did you hear the conversation between the sheriff and Thiede when they came in there?

A. Yes; I heard them talking.

Q. Could you tell the jury what was said there? Cherry asked you if you heard Thiede say, "I have killed my wife;" You wouldn't undertake to say he didn't say that?

A. No, sir; I wouldn't.

Q. Because you didn't hear what was said?

A. I didn't.

Cross-examination:

Q. You say there were no demonstrations of sorrow made until that man went away. Didn't it commence as soon as you saw him at your office, at your house?

A. No, sir; there was no sorrow and bewailing; he simply, in an excited way, told me that his wife's throat was cut.

Q. At that time he didn't make any of those exclamations that you have mentioned?

A. No, sir.

368 Q. They were made after the body was brought into the saloon, were they not?

A. Yes, sir.

Q. And after you made the examination and covered the body up on the pool table?

A. Yes, sir; while we were alone in the room.

Q. I will ask you if your conversation with me and in reviewing your testimony has caused you to deviate from the truth in this matter as you remember it and understand it?

A. No, sir; it has not. I merely wished to refresh my memory regarding some of the times and distances which I gave there.

Q. I will ask you if there is not a part of the blood that still remains in a sort of liquid condition after coagulation, the serum?

A. Yes, sir; after the clot is formed.

Q. And if that is not liable to drop off with two persons, one holding one end and the other the other, carrying the body along; if it wasn't liable to drop some of the serum on the floor going to that pool table?

A. Yes, it is; the serum is liable to drop.

Q. Wouldn't that stain the floor?

A. Not as much as the blood, because the corpuscles would probably be entangled in the clot.

Q. But it would carry some of them; it would make some stain; it is not absolutely water, is it?

A. It is nearly a clear fluid.

Q. But as it would drop from the body wouldn't it carry with it, and wouldn't the movement have a tendency to drop part of the clots that might be adhering?

A. Yes, sir.

369 Q. If that wound is in the throat, as you say, and the blood poured out over the person and clothing, it would necessarily saturate the clothing very much, wouldn't it?

A. Yes, sir.

Q. In carrying that body in there in the manner you did, would it be likely any portion of the blood from the clothing or small clots that would be loosened by means of the serum having begun to separate from the corpuscles, wouldn't it be likely some portions of the bloody substance would occasionally drop on the floor?

A. Very probably some of the clots or serum would fall.

Q. You say you were present when the sheriff came in, but you can not give the language that was used?

A. Yes, sir.

Q. You heard the conversation, but don't pretend to remember; is that what I understood you to say?

A. Yes, sir.

Q. If you had heard such a startling exclamation as, I have killed my wife, do you not think you would have remembered it? Did you understand any of the words spoken at all?

A. No, sir; I didn't. When the sheriff came first into the room later I did hear him, when he turned Mr. Thiede over to his deputy, I don't remember whether it was Cahoon or Montgomery, tell him to take charge of him and tell him to sit down.

Q. Was that in the house?

A. Yes, sir.

Q. Did Thiede sit down?

A. He sat down, but when the sheriff left him he rose again and the sheriff went and pushed him——

Q. Didn't he strike him?

A. I don't think he struck him.

Q. Did you see him kick him?

A. No, sir; but I was told he did do it.

370 Redirect examination:

Q. What you said were drops of blood on the floor, was that serum or blood?

A. It looked like blood.

Q. How close to the south door of the saloon when it stood open were these drops of blood?

A. There seemed to be quite a number on the floor; there were some right near the door.

Q. State whether or not it is a fact that the drops of blood on the floor were right close to the door if it were open?

A. Yes, sir.

Cross-examination:

Q. Does that door swing around wide open or does it catch on the floor?

A. I don't know, sir.

Q. I will ask you if any of those drops of blood were in the direction of the pool table, if you noticed?

A. All that I noticed were near the door.

Q. You had walked in and around where this blood was in the dark when you first came there?

A. Yes, sir.

Q. And then walked in that south door after that carrying the body, you and the old gentleman?

A. Yes, sir.

Redirect examination:

Q. You say there were no blood stains near the pool table where the body was, but they were near the south door?

A. Yes.

Cross-examination:

Q. Did you make any examination for them toward the pool table?

A. No, sir; I didn't.

Q. Just looked at them?

A. I saw there were blood stains.

371 JACOB LAUENBERGER, recalled.

By Judge HOWAT:

Judge HOWAT. I wish the record to show that the defendant consents that Mr. Gronosky act as interpreter.

Q. (By CHERRY.) Do you want that done every time?

A. Yes, sir.

Judge CHERRY. Let it show; very well.

Q. Did Thiede have a light or a lamp with him that night Thiede came for you?

(Objection as repetition.)

The COURT. I don't wish the former examination gone over. He may answer that question.

(Exception.)

A. He had no lantern, he is positive; and he is not sure whether he had a candle or not.

Q. Did he get a light afterwards or not; if so, what kind of a light did he get?

(Objection as immaterial, irrelevant, incompetent, and repetition.)

(Objection overruled. Exception.)

A. When he came out of the saloon he had a candle in his hand.

Q. What did Thiede do that night with a light as to making an examination of the wall of the saloon outside?

A. He said when he came out from the saloon he took the candle and held it right against the wall from the door, one side and then the other.

Q. How far east did he carry the candle and examine the wall that way, if at all?

A. He can't tell how far.

Q. Did he examine any part outside of the saloon from the south door east with the candle?

A. From that door he came out he had a candle in his hand and examined it, but how far he couldn't say.

372 Q. Show the jury how he held the candle.

A. Very quick; the movement with the candle was very fast.

Q. What was Thiede looking at then wher he was doing that with the candle?

A. He don't know what he meant by it.

Q. Which direction was Thiede's face, to the wall or away from it?

A. To the wall.

Q. Ask whether or not he saw any blood stains on the south door of the saloon.

A. Not that night.

Q. After daylight?

A. He did after daylight.

Q. How many blood stains did he see on there?

A. Three or four.

Cross-examination:

Q. Ask him if he didn't state in his former examination when he and Thiede came out of the house they went right over to where the body lay.

A. He says if he swore to anything like that it would be so, but he is not positive it was so.

Q. He don't know whether when they came out they went to the body or the saloon first? Ask him if they went to the saloon before they went to the body.

A. He can not positively say whether it is so, but if he has sworn to it it is so.

Q. I am asking him what his recollection is now; what he remembers now; whether they went first to the saloon or where the body lay.

A. He can not bring it to memory.

Q. Ask him if his memory is very good as to what occurred there at that time.

A. Oh, yes; his memory is very good on things that happened.

Q. Ask him why it is he can not remember whether he went to the body or saloon first.

373 A. At that time he was scared and excited so that he can not recall it.

Q. Ask him if he remembers going into the brewery for a lantern.

A. Yes, sir.

Q. Ask him if Thiede didn't go with him.

A. He can not tell positively whether he did or not.

Q. Don't remember that?

A. No, sir.

Q. Ask him if he remembers getting the wash basin to wash the doctor's hands after they carried the body into the saloon.

(Objection as not proper cross-examination.)

Q. I will ask him whether or not he didn't do that?

A. No, sir; he didn't.

Q. Ask him who he talked to about this piece of evidence he has given this afternoon.

A. Judge Howat.

Q. Ask him if he talked to Judge Howat in German or in English, or through an interpreter.

A. German.

Q. He talked in German?

A. Yes, sir.

Q. Ask him when it was he talked to him.

A. One night last week, he said, in the judge's office.

Q. Ask him if he didn't bring a suit against Thiede to collect some money from him after he has been in jail.

A. He said he sued him and Moyer got him the money.

That the juror, Louis Gromosky, while acting as interpreter for the witnesses, Jacob Lauenberger and Mary Lauenberger, remained in his place in the jury box and did not at any time while acting as such interpreter leave his place in the jury box.

374 HENRY W. WEILER, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. What is your name?

A. Henry W. Weiler.

Q. Where do you live?

A. Murray.

Q. Do you know Charles Thiede?

A. Yes, sir.

Q. How long have you know' him?

A. About 4½ years.

Q. What is your business?

A. Meat business; butcher.

Q. Did you know of his wife being killed?

A. Yes, sir.

Q. Did you go there on the morning of the night on which she was killed?

A. I went there the morning of the first day of May.

Q. In response to a note sent by Dr. Farrabee?

A. Yes, sir.

Q. What time in the morning was it you got there?

A. I should judge about four o'clock, it may have been a little later a few minutes; I wouldn't be positive about the time.

Q. Is this saloon of Charles Thiede's in this county and Territory?

A. Yes, sir.

Q. After you went there you saw Thiede?

A. Yes, sir.

Q. Where was he?

A. In the saloon.

Q. Did he say anything about who he thought killed his wife?

A. No, sir; I asked him who did the crime and he said he didn't know; some son of a bitch killed her.

Q. Did he refer to any person having been there that night?

A. No, sir.

Q. Didn't he say something about some one being there for whiskey that night?

A. No, sir; not at that time.

375 Q. At any time about some one being there for whiskey?

A. He said there were two men there, about an hour ago, is the way he spoke to me, and he said he thought that they were the sons of bitches that killed her; he said there were two men there about one hour ago, and he thought they were the sons of bitches that killed her.

Q. Did he state how he came to find his wife there?

A. I said, Charley, how did you find your wife? and he said, I went out of that door, pointing to the south door, to urinate.

Q. Did he say urinate?

A. No, sir; he said "piss." He said I went out of that door to piss, and I looked that way and saw my wife lying there murdered.

Q. Is that the way he said he found her?

A. That is the way he said he found her.

Q. That was the south door he said he went out of?

A. (Pointing to the south door.) Yes, sir.

Q. The remains of Mrs. Thiede had been carried into the saloon and put on the billiard table before you got there, I take it?

A. Yes, sir.

Judge CHERRY. I ask some restrictions be placed on the leading manner of counsel's examination. I ask that he not indulge in such leading questions so frequently. This witness is an intelligent witness and can answer questions.

Q. Did you see any blood stains on the door next day?

A. I saw blood stains on the door and on the side of the building.

Q. What day?

A. The following Tuesday, which would be the second of May.

376 Q. What part of the building, what direction from the south door?

A. It was on the south door and east of the door leading towards the main road.

Q. How high were they on the door and the building?

A. About four and a half feet; it may have been five.

Cross-examination by Judge CHERRY:

Q. Did you testify in this matter before the coroner's inquest and preliminary hearing?

A. Yes, sir.

Q. Did you testify on either of these occasions to seeing any blood stains on the door or building?

A. The questions weren't asked me—

Q. Did you testify to seeing them?

A. I did not.

Q. Did you tell anyone about seeing them?

A. I did not.

Q. Didn't you talk with the attorneys about your testimony?

A. I told my wife about it, and told several people afterward; told it all over Murray, in fact.

Q. Who was with you when you found them?

A. Lauenberger.

Q. Wasn't the deputy sheriff at the time?

A. No, sir.

Q. Weren't you there the morning they were there?

A. The morning of the first or next day?

Q. The morning of the first.

A. I was there; yes, sir.

Q. You know Montgomery?

A. Yes, sir.

Q. Weren't you there when Thiede was arrested, when Montgomery was there?

A. Yes, sir.

Q. What time did you leave that night?

A. About six thirty, I should say; I wouldn't be positive about the time; it may have been a little later.

377 Q. Did you see any blood stains around there before you left?

A. I saw lots of blood on the ground.

Q. Did you see any you have spoken of on the door?

A. I didn't; I didn't look for any.

Q. You saw these afterwards?

A. The next day.

Q. You say they were on the building or on the side of the door?

A. They were on the outside of the door and outside of the building.

Q. Whereabouts on the building?

A. About two feet from the door and one about four feet farther in.

Q. East?

A. Yes, sir.

Q. What kind of stains were they?

A. Little small stains, little larger than pin heads, evidently blood, for I examined them.

Q. Did you examine them with a glass?

A. No, sir.

Q. Just looked at them?

A. I made a close examination with the naked eye, though.

Q. About the size of a pin's head?

A. A little larger, some of them.

Q. You don't know how they were brought there?

A. No, sir.

Q. For all you know it might have been some one killed a mosquito on the side of the building that had blood in it?

Q. You say you had some talk with Thiede when you got there about four o'clock?

A. Yes, sir.

Q. What was his appearance as to being excited or otherwise?

A. He seemed to be excited and I asked him, Charley——

Q. I am not asking about that. I asked what his appearance was as to being excited or otherwise.

378 A. He appeared to be excited; he walked around considerably; went to the house.

Q. Rub his hands together?

A. He rubbed his hands, of course.

Q. Isn't it a fact you couldn't get much sense out of him in talking to him, and didn't you so testify to the coroner? Before the coroner?

A. I didn't hold much conversation with him.

Q. Didn't you say you couldn't get much sense out of him?

A. Sense out of him? No; that is just what I said.

Q. That is a fact, wasn't it?

A. Yes, sir.

Q. I will ask you if he said anything about his child in that conversation?

A. Yes, sir; he did. He said, All I have left now is my child, and then he walked off again, prancing around.

Q. Who was present when you were talking to Thiede?

A. Farrabee was in the room.

Q. Any one else?

A. I don't believe there were. Farrabee is all, and Thiede.

Q. Did you come alone over there?

A. No, sir.

Q. Who came with you?

A. Deputy Cahoon.

Q. Do you recollect what you testified to before the coroner?

A. I didn't charge my memory hard, but I guess I would remember it.

Q. Your testimony before the coroner was given soon after it happened, was it not?

A. I don't recollect; I think it was the same day, though.

Q. The same afternoon?

A. Yes, sir.

Q. Wouldn't your memory be better then as to what transpired and what you said than now?

A. I don't know why it would; I don't believe I have forgotten anything.

379 Q. You never forget?

A. I do forget, but I don't think I have forgotten anything that transpired there, or what I testified to there.

Q. Do you remember what you did testify to before the coroner?

A. I simply answered the questions that were asked, which were about the same as I testified to here.

Q. I will ask if this question was asked you, Was it on the pool table when you arrived there—referring to the body of the deceased, Mrs. Thiede?

A. I don't remember.

Q. Do you remember whether you said yes or not?

A. If I said yes, that would be correct.

Q. I will ask you if this question was asked you, The remains of Mrs. Thiede?

A. I don't remember.

Q. Do you remember this being your answer, Yes, I looked at the corpse and asked Charley what had happened. I said, Who done this? He said, I don't know, and rubbed his hands and walked up and down the floor kind of excited. Did you make such an answer as that before the coroner?

A. I brought in the son of a bitch just the same, for those are the words he said.

Q. Do you remember making such an answer?

A. Yes, sir; but you have not a part of it in.

Q. Then, wasn't this question asked, He said he didn't know? Do you remember that? Didn't you answer this, Yes, he said, this son of a bitch that got whiskey here awhile ago. I guess that was before I came there. Whom he meant by that I don't know. It seems somebody had been in and bought some whiskey for himself before I came there. I said, Charley, how did you find this woman? and he said, I got up to urinate out of this side door. Did you make that answer?

380

A. Yes, sir; that is correct.

Q. Then he didn't say the two men?

A. Some son of a bitch, he said.

Q. This son of a bitch that got whiskey here a while ago?

A. Some son of a bitch.

Q. That got whiskey here a while ago?

A. He didn't say that.

Q. Didn't you give that answer before the coroner?

A. Some son of a bitch here a while ago.

Q. Is that your answer?

Yes; he said this son of a bitch that got whiskey here a while ago, I guess.

Q. Do you remember whether he said that to you or whether you testified to that before the coroner?

A. I testified he told me some son of a bitch was here an hour ago and got some whiskey.

Q. Are you sure you said an hour ago?

A. I think I did, for those were the words he spoke to me.

Q. Are you sure he testified to that?

A. I have told you all I can remember of it.

Q. You are not certain?

A. I testified to the words I got from him as near as I could.

Q. How long did you remain there in the saloon after you went there?

A. Till Sheriff McQueen came.

Q. Stay in the saloon all the time?

A. I stayed in the saloon for half or three-quarters of an hour and then walked to Lauenberger's house, and the old lady was quite excited and I tried to pacify her.

381 Q. You went out and stayed awhile?

A. I did.

Q. Did you come back again?

A. I came back again.

Q. Did you see Thiede off and on while you were there before daylight?

A. Yes, sir.

Q. Do you remember how he was dressed?

A. I think he had on a black coat and white vest.

Q. Black or dark?

A. Dark; I didn't pay any close attention to the colors.

Q. Had that coat on all the time while he was there?

A. Yes.

Q. Had that white vest on when the sheriff came?

A. I wouldn't be positive; he went to the house several times and came back.

Q. Was it a cool day?

A. Yes, sir; it was medium cool.

Q. He was not around in his shirt sleeves after you got there?

A. I couldn't say as to that; I didn't think he was; I think he had a coat on.

Q. Did you see a butcher knife there that morning?

A. Farrabee handed me a knife.

Q. What did you do with it?

A. Put it in my pocket.

Q. What did you do with it after that?

A. I think I handed it to Sheriff Montgomery.

Q. Did you look at it in the morning?

A. I kept it till daylight.

Q. You didn't show it to Montgomery till daylight?

A. I don't remember.

Q. What time did Montgomery get there?

A. After daylight shortly.

382 Q. After he came?

A. I think I gave him the knife.

Q. Then you showed him this knife?

A. Yes, sir.

Q. Thiede was not present when you showed him this knife?

A. No, sir.

Q. Had been taken outside?

A. Yes, and set on the steps of the brewery.

Q. What kind of a knife was it?

A. A case knife, it was a butcher knife, apparently about a six or seven inch knife, straight knife.

Q. You mean the bl'de?

A. The blade was about 6 inches. I should say it was an eight-inch knife full length blade and handle together.

Q. What kind of a handle, dark or light?

A. Dark.
Q. Wood or horn?
A. Wood.
Q. What in reference to the point?
A. The point I think was broken.
Q. Were there any blood stains on it?
A. I held it till morning and couldn't see any blood stains on it.
Q. Would you know the knife again if you would see it?
A. Yes.
Q. Is that the knife?
A. Yes, sir.
Q. What became of that knife after you examined it?
A. I think I handed it to Montgomery, and I think that was the last sight I got of it.

Redirect examination:

Q. These blood stains you saw on the door, did they appear to be fresh or otherwise?
A. Yes, sir; they appeared—I couldn't say whether they were fresh, but I could say they were blood.
383 Q. They appeared to have been on there a long time or recently?
A. In my own mind I satisfied myself they were recent.
Q. Counsel asks if you testified before the coroner about seeing these blood stains; had you seen them before you testified before the coroner?
A. No, sir.
Q. Were you asked about it before the magistrate?
A. No, sir.
Q. Who called your attention to the blood stains?
A. Lauenberger.
Q. Do you understand German?
A. Yes, sir.

Cross-examination:

Q. How did you come to go down there that day?
A. I am all over that country; I run a meat wagon for one thing.
Q. Did you have a meat wagon?
A. I had been half looking at the cattle passing there, and I went in to comfort Lauenberger and his wife after their fright, and Lauenberger says, I forgot something yesterday.
Q. What time in the day was it?
A. In the afternoon.
Q. About what time in the afternoon?
A. About four o'clock.
Q. The second of May?
A. The second of May.
Q. Was the sun shining?
A. I don't remember.
Q. Was it shining on the day before the first of May?
A. I think it was, but I am not positive.
Q. The sun would be shining on that building where those stains were during the middle of the day wouldn't it, on the first of May?

A. Not the full day because the brewery would shut it off; no, I think the sun would shine on it all day if it was a sunshiny day.

384 Q. Did they look fresh on the day you saw them?

A. I was satisfied in my own mind that it was fresh blood.

Q. That was merely an opinion of yours?

A. Yes; also that of Lauenberger's.

The COURT. That may be stricken out.

Q. Wasn't Lauenberger up in Salt Lake attending the inquest on the second of May?

A. I don't think he was; he was at home on the second of May.

Q. Are you sure of that?

A. Yes, sir.

Q. Did you see him there any other time during that day besides the afternoon?

A. I think it was in the afternoon; I wouldn't be positive about the time, but it was the second day of May I saw Lauenberger.

Q. Did you see him around those premises more than once that day?

A. I don't think I did.

Q. You don't know what time it was?

A. I wouldn't be positive whether it was the forenoon or afternoon, but I think the evening.

Q. Had you been before the coroner's inquest at that time?

A. On the same day of the crime I was before the coroner.

Q. Wasn't Lauenberger attending as a witness?

A. I expect he was.

Q. Don't you know he testified the next day?

A. I know nothing about it; I saw Lauenberger there the next day all right.

Q. You are certain as to the next day?

A. Yes, sir.

Q. Might it not have been the third of May?

A. No, sir; I am quite sure.

385 Q. You made no memorandum?

A. No, sir.

Q. Are you quite sure it was the second or third day of May?

A. My memory tells me it was the second of May I happened over that way.

Q. Didn't you go over for the purpose to look over the premises a little?

A. No, sir; I had other business to look after.

Redirect examination:

(No redirect examination.)

The court gave the customary admonition to the jury and adjourned till 10.00 o'clock to-morrow morning.

386 WEDNESDAY MORNING, *October 17th*, 1894.

Mrs. EVA BERG, a witness sworn for the prosecution, examined by Judge Howat through Interpreter A. H. Steele, testified as follows:

Q. Your name is Eva Berg?

A. Yes, sir.

Q. Where do you live?
A. By the Swedish meetinghouse.
Q. Where?
A. By the road near the Germania smelter.
Q. Which way does the road run—north, south, east, or west, or how?
A. She don't know, but she thinks north and south; it is the road that goes toward Lovendahl's.
Q. Is it the road that runs near Thiede's saloon?
A. Yes, sir.
Q. Is it the road that goes over Cottonwood Creek, near Thiede's saloon?
A. Yes, sir; the one that runs up and down the hill.
Q. How far do you live from Thiede's saloon?
A. About a few minutes' walk.
Q. Which side of the road, the same side as Thiede's saloon or the other side?
A. On the right-hand side when you walk from the creek south.
Q. Were you living there in April and May last?
A. Yes, sir.
Q. Did you know Mrs. Thiede when she was living there?
A. I knew her by sight, but not personally; never associated with her.
Q. Did you know of her being killed?
A. Yes, sir.
Q. Did you see her the Monday night before she was killed, or Monday evening?
A. Yes, sir.
Q. Where did you see her?
A. In this witness's house.
387 Q. What time in the evening did she come to your house?
A. About seven o'clock.
Q. Did she come all alone, or was someone with her?
A. Alone.
Q. What was her appearance as to whether she was crying or not?
(Objection, incompetent, immaterial, and irrelevant.)
Q. What was she doing when she came to your house?
(Objection, incompetent, immaterial, irrelevant, and not connected with this defendant.)
(Objection overruled. Exception.)
A. She came in and asked if the witness had any——
Q. What was Mrs. Thiede doing when she came to her house?
A. She knocked, and came in.
Q. State whether or not she was crying.
(Objection as leading, immaterial, incompetent, and not tending to prove or disprove any issues in this case.)
(Objection overruled. Exception.)
A. She didn't cry just as she came in, but she had cried.
Q. How long did she remain there?
A. About five minutes.
Q. Where did she go then?
A. I don't know; but she said she was going home.
Q. What was the appearance of her eyes when she came there?

A. They were red, and looked about like any person would after crying.

(Judge Cherry asks that be stricken out as a conclusion, immaterial and irrelevant.)

Judge HOWAT. That part that they looked red is competent.

The COURT. The other part may go out.

(Exception.)

388 Cross-examination by Judge CHERRY:

Q. Did she talk to her in Swedish or German?

A. The witness can not talk German, but she talks a little English, and between the German and English Mrs. Thiede spoke and the little Swedish she was understood by the witness.

Q. Ask if Mrs. Thiede could speak Swedish.

A. She could talk a few words, because she had lived so long among the Swedes she had learned some words.

Judge Cherry asks that her entire testimony be stricken out as incompetent and irrelevant and immaterial.

(Motion overruled. Exception.)

389 JOHN ANDERSON, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Q. You say you can talk English enough to be understood?

A. Some words I can not understand; I can not understand all.

Q. What is your name?

A. John Anderson.

Q. Where do you live?

A. Murray.

Q. Were you living there in April and May last?

A. Yes, sir; I have been living there three years.

Q. Do you know Thiede's saloon?

A. Yes, sir.

Q. How far were you living from Thiede's saloon?

A. I can't tell certainly; about 200 yards; just about that; I can't tell exactly.

Q. Did you know of Mrs. Thiede being killed?

A. I seen the people in the morning around there, so I went down there, too.

Q. The night before that, state whether you heard any screams coming from the neighborhood of Thiede's saloon.

A. I heard a scream that way in the night.

Q. Can you say what hour?

A. I can not, for I went and listened, but didn't look at the clock; so I can not say what time it was.

Q. Had you been asleep and woke up?

A. Yes, sir; I had been lying there asleep.

Q. What awakened you?

A. Well, I hear some kind of a funny scream, so I woke up and listened.

Q. How many screams did you hear?

A. Three times; twice when I was lying and one when I got up and heard another one.

Q. From what direction did it come with reference to Thiede's saloon?
A. From the east.
390 Q. What direction do you live from Thiede's saloon?
A. West.
Q. Do you know where Thiede's saloon is?
A. I do.
Q. Can you say to the jury whether these screams came from Thiede's saloon or not?
A. They came from Thiede's saloon.
Q. Can you state whether they appeared to be the voice of a man or a woman?
A. No, sir; I couldn't.
Q. Were they loud?
A. Not very loud.
Q. Did the person scream loud?
A. I didn't hear them scream very loud.
Q. You say you were about two hundred yards away?
A. Just about.
Q. Did this screaming awaken you?
A. I was laying in there sleeping and heard a scream, so I went out.

Cross-examination by J. W. CHERRY:

Q. How far do you live from Thiede's saloon?
A. About 200 yards.
Q. Which direction?
A. West from Thiede's saloon.
Q. The first house?
A. The third house.
Q. What time did you go to bed Monday night?
A. A little after ten.
Q. How do you arrive at that time?
A. I came home at ten o'clock and went to bed right away.
Q. From where?
A. I was up at the smelter, the camp of the army.
Q. Come past Thiede's saloon?
A. Yes, sir; road goes right past Thiede's saloon.
Q. Did you see anything there?
A. Mrs. Thiede sitting by the saloon.
391 Q. Was there a light in the saloon?
A. Yes, sir.
Q. Door open?
A. I don't remember.
Q. Was there a light in the house?
A. No, sir.
Q. Are you sure of that?
A. Yes, sir.
Q. You went on home?
A. Yes, sir.
Q. Went to bed?
A. Yes, sir.
Q. Looked at the clock before you went to bed?
A. Yes, sir.

Q. What time was it?
A. 10 o'clock.
Q. Just ten?
A. Just ten when I went home, and I just lit the lamp and went to bed.
Q. You keep correct time at your house?
A. Yes, sir.
Q. You went to bed and to sleep?
A. Yes, sir.
Q. Woke up afterwards and heard these screams?
A. Yes, sir.
Q. Did you hear anything else?
A. No, sir; I didn't.
Q. Did you hear dogs barking?
A. No, sir; I didn't.
Q. How many screams did you hear?
A. Three of them.
Q. Just three?
A. Yes, sir.
Q. You don't know whether they were the screams of a woman or a man?
A. No, sir; I can not tell.
Q. Did you go outdoors?
A. I was just standing in the door.
Q. Anyone sleeping with you?
A. A fellow named Neil Locus.
Q. Did he wake up?
A. No, sir.
Q. How many other persons were in the house?
A. Five more sleeping in the house.
Q. Any of them wake up?
A. No, sir.
Q. How do you know these screams came from Thiede's saloon?
A. They come from that direction.

392 Q. You don't know whether they came from Thiede's saloon or some other place in that direction?
A. I was in the house and heard the scream coming from that direction.
Q. It might have been some one on that county road, might it not?
A. That is more than I can tell.

393 W. F. HILLS, a witness sworn for the prosecution, examined by Judge Howat, testified as follows:

Judge Cherry makes the same objection to this witness in regard to not being notified as to the others.
(Objection overruled. Exception.)
Q. What is your name?
A. W. F. Hills.
Q. What position do you hold?
A. Jailer of the county jail.
Q. Has Thiede been there for sometime so that you have observed him?
A. Yes, sir.
Q. Can you state whether he is left-handed or right-handed?

A. Right-handed.

Prosecution rests.

394–395 Thereupon the defendant offered and introduced the following evidence in his behalf, viz:

396 In the district court of the third judicial district of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES H. THIEDE.

VOLUME II.

397 *Defense.*

A. V. MILLER, a witness sworn in behalf of the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. A. V. Miller.
Q. Where do you live?
A. Salt Lake City.
Q. What is your business?
A. Civil engineer.
Q. How long have you been a civil engineer?
A. I have been in the field for ten years.
Judge HOWAT. I will admit he is qualified.
Q. I will ask you if you h. e had occasion to make drawings of the premises and surroundings and interior of Thiede's saloon, what is known as Charles Thiede's place near Murray, six or seven miles south of here?
A. Yes, sir.
Q. About when did you do that work?
A. Can I refer to a memorandum?
Q. Yes, sir; to refresh your memory.
A. October 5th.
Q. Will you please look at those maps on the wall and state to the jury whether those are the ones you made?
A. They are.
Q. To what scale is this one, marked a plan of Thiede's saloon and surroundings?
A. Ten feet to one inch.
Q. Is it or is it not a correct plat of what it shows to be and the relative position of each of the objects as shown there?
A. It is a correct plat.
Q. State if you measured any distances while you were there between the objects that are represented on that plat?
A. Yes.
Q. Are they indicated on the map?
A. In red ink.
Q. What does this line represent?
A. The county road.
398 Q. What direction is that on the map?

A. It is the east side of the map.
Q. This drawing here represents what?
A. Cottonwood Creek.
Q. And this?
A. The bridge across Cottonwood Creek.
Q. This is what?
A. Thiede's saloon.
Q. What does this line running there in a southerly direction and this one in a northwesterly direction indicate?
A. That indicates the fence around the residence.
Q. What does this represent?
A. The residence.
Q. What does this line around by the residence represent?
A. The porch on the ouside of the house.
Q. And here you have drawn a line.
A. That is the gate and the walk from the house out into the road, and the opening represents the gate through the fence.
Q. What is this?
A. The brewery.
Q. And this?
A. The house adjoining the brewery.
Q. And this?
A. The privy.
Q. Can you tell the distance from the door of the saloon to the door of the old house on the opposite side?
A. 49 feet.
Judge HOWAT. Are the distances given on the map?
A. Yes, sir.
Q. What is this?
A. The lane between the saloon, house, and brewery; it is a narrow road.
Q. What is the distance from the saloon door, the south saloon door, to the house?
A. 135 feet.
Q. That is, to the corner of the porch, or what point?
A. That is, to the house itself is 138 feet; as a man would naturally walk in the middle of the path it would be 135 feet.
399 Q. To the hall door, is it further?
A. 29 feet more.
Q. What is this drawing here?
A. That represents the interior of Thiede's saloon.
Q. What do these objects represent here.
A. Windows; that is the south door and that is the other door; that is the bar and lunch counter, and that is the shelving behind the lunch counter.
Q. What is the length of the saloon?
A. 40 feet on the inside.
Q. About 42 feet on the exterior?
A. Yes, sir.
Q. The width of it?
A. 20 feet interior.

Q. And the exterior?
A. 21.8.
Q. Did you measure the height of the bar?
A. I measured the length, not the height.
Q. And the lunch counter?
A. The length also.
Q. How far is the lunch counter from the bar?
A. 2 feet.
Q. Can you give the length of the lunch counter?
A. 12 ft.
Q. The length of the bar?
A. I have not that marked.
Q. Is that a correct representation of the objects represented on that plat?
A. Yes, sir.
Q. Did you make any other measurements while you were down there?
A. I made a measurement from the corner of Thiede's property to the Nelson saloon along approximately the center of the road.
Q. What was the distance?
A. 2,818 feet from the south door of Thiede's saloon to the door of the the Nelson saloon.
Q. I will ask you whether you measured the distance from Thiede's saloon over to Harry Haynes' store?
400 A. Yes, sir; the distance is 4,660 feet.
Q. Can you give that in miles?
A. Approximately seven-eighths of a mile.
Q. And to the Nelson saloon from Thiede's saloon?
A. 200 ft. over half a mile.
Q. Harry Haynes' store is situated on State road?
A. Yes, sir.
Q. Is there any point on State road that is nearer Thiede's saloon than Haynes' store?
A. Yes, sir; but I can't tell exactly the difference.
Q. Not much nearer?
A. Very little.
Q. Can you state how much nearer it is from the south door of Thiede's saloon to the southeast corner of the building outside?
A. 25 feet.
Q. How far is it from the southeast corner of Thiede's saloon to the window on the east side of the saloon?
A. From the southeast corner to the east window is 10 feet from the interior; 10 feet 7 or 8 inches from the outside.
Q. That is to the south line of the window?
A. That is to the center of the window.

401 ROBERT KIZER, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. Robert Kizer.
Q. Where do you live?
A. Murray.

Q. Do you know Charles Thiede, the defendant?
A. Yes, sir.
Q. Did you know his wife in her lifetime?
A. Yes, sir.
Q. Where do you live with reference to their place?
A. Right west.
Q. How far?
A. About two hundred yards.
Q. You live in the first house west?
A. Second.
Q. How long have you known Mr. and Mrs. Thiede?
A. About five years, I guess.
Q. Have you lived there during all that time?
A. Yes, sir.
Q. What is your age?
A. 20.
Q. State whether you ever worked for Thiede.
A. Yes, sir.
Q. About how long ago did you begin work for him?
A. About one year ago.
Q. What kind of work did you do?
A. Just worked around tending to the horses and helping him a little, and doing chores around.
Q. About how long did you work for him?
A. About two months, I guess.
Q. Did you ever work for him after that in any capacity?
A. I stayed there once in a while tending bar for him when he went off?
Q. Did you tend the saloon while he was away from home?
A. Yes, sir.
402 Q. During the time you worked there were you in and around the house any?
A. Yes, sir.
Q. Did you eat your meals there?
A. Yes, sir.
Q. What meals did you eat?
A. Three times a day; breakfast, dinner, and supper.
Q. Where did you sleep?
A. Slept home.
Q. While you were tending bar during the time he would be away, did you eat at the house then?
A. Yes, sir.
Q. Always?
A. Yes, sir.
Q. You may state, while you were working there during the time you have mentioned and while you stayed at Mr. Thiede's house, while you took your meals at Thiede's house, what, if anything, you observed as to the conduct of Mr. Thiede and his wife toward each other.
A. I can not understand what you mean by that.
Q. How did they act toward each other?
A. They got along first rate, so far as I could see anything about that.

Q. Did you never see any difficulty between them?

A. No, sir.

Q. Did you ever see him strike her in all that time?

A. No, sir.

Q. State whether or not you ever saw her with a black eye or bruised face.

A. I never noticed any.

Q. If you ate at the table would you have a chance to see it; were you close to her, and in the room with her?

A. Yes, sir.

Q. Wasn't Mrs. Thiede present during meal time; wasn't she in the room?

A. Yes, sir.

Q. Did you see her around the saloon at any time?

A. Yes, sir.

Q. I will ask you to state if you ever saw Mr. Thiede show any special act of kindness toward her that you remember of.

403 A. Yes, sir.

Q. On what occasion was that, and when?

A. That was about a year ago. I seen him kiss her one night; he took her to town one day; I took her to town one day and he kissed her good-bye before I left.

Q. State the circumstances; where you were, and where he was, and she was.

A. He was in the saloon and we were in front of the saloon in a buggy, and he came out and kissed her.

Q. You say that was about a year ago?

A. Yes, sir.

Q. I will ask you if you know anything about how the house was furnished while you were there?

A. They had good furniture.

(Objection as immaterial and incompetent.)

Judge CHERRY. My purpose is to rebut the presumption of ill treatment that might be drawn from that evidence, and to show everything possible to the contrary.

The COURT. I understand that is not denied that she had a proper home.

Judge CHERRY. It won't be in the record and the jury won't know anything about it. We expect to show it was unusually cozy and comfortable, and that is a circumstance the jury should consider.

The COURT. You may let him describe what the furniture was.

Q. What, in a general way, was the kind of furniture, furnishings, carpets, and pictures, etc., in the house, if any, while you were there?

A. He had good furniture in the house, so far as I know.

404 Q. What was the quantity and character of food provided while you were there for the family?

A. Very good food.

Q. How as to quantity; have enough of it?

A. Yes, sir.

Q. State if you know anything about the defendant, Charles Thiede making his wife a present at any time?

A. He gave her a gold watch one Christmas for a Christmas present.

Q. Do you remember what Christmas it was?

A. Not exactly.

Q. (By the COURT:) What do you know about that to your own knowledge? Just tell what you know yourself.

A. It might have been about two or three years ago.

Judge HOWAT. The court wants to know if you saw him give it to her?

A. She told me herself he gave it to her.

(Judge Howat moves to strike out that testimony as hearsay.)

The COURT. He can only state what he knows.

Judge HOWAT. I move to strike out that testimony as hearsay and incompetent.

The COURT. That part of it may go out.

Q. Did you see her have the gold watch you are speaking of now?

A. Yes, sir.

Q. That is all you know; you didn't see him give it to her?

A. No, sir.

Q. Or anything of that kind?

A. No, sir.

Q. I will ask you in the intervals you were not working for him whether you had occasion to pass by there?

A. Yes; I passed there all the time.

Q. About how often would you pass Thiede's house and saloon?

A. Two or three times a week, anyhow.

405 Q. Did you see either Mr. or Mrs. Thiede while you were passing there?

A. Yes, sir.

Q. I will ask you if any of the time while you worked there, or any time passing there when you saw them, whether you ever saw Mrs. Thiede with a black eye or bruised face?

A. No sir; I never noticed any on her.

Q. I will ask you if you ever knew of Mrs. Thiede receiving a fall?

A. Yes, sir.

Q. State when and where it was and all the circumstances about it.

A. I couldn't tell when it was, but she was in the saloon one day tending the saloon, and I was there in the morning and went away and come back about noon—11 o'clock somewhere—and when I went in she was standing upon the bar with her head upon the bar; she had fell down behind the bar.

Q. Did you speak to her?

A. I spoke to her when I went in.

Q. Did she answer you?

A. She raised up her head and looked at me.

Q. Did she say anything?

A. No, sir.

Q. Describe what she did.

A. She just laid her head back on the bar and kept sliding down on the bar and fell down behind.

Q. Did you see where she fell after she went behind the bar; did you step around to see?

A. No, sir.

Q. You just heard her fall?

A. Yes, sir.
Q. You judged from what you heard?
A. Yes, sir.
Q. You saw her sliding off?
A. Yes, sir.
Q. What did you do?
A. There was nobody there, so I locked the south door and went
406 out through the west and shut it and left her there.
Q. Did you look back to see where she was then?
A. No, sir.
Q. Didn't look around to see?
A. No, sir.
Q. Was Thiede there?
A. No, sir.
Q. Do you know whether he had gone away that day or not?
A. Yes, sir.
Q. You may state whether or not in your judgment she was under the influence of liquor at that time?
A. I suppose she was.
Q. What was her appearance? How did she look?
A. She looked as though she was.
Q. Can you give any reason; can you explain anything?
A. No.
Judge HOWAT. I admit he is competent. He has seen a great many drunk people and can tell whether they are drunk or not.
A. She looked to me as though she was drunk by the looks of her.
Q. Did you ever see her at any time when she was under the influence of liquor?
A. Yes, sir.
Q. Before or after that?
A. After.
Q. Do you know anything about the deceased's going to Germany at any time while you lived there?
A. Yes, sir.
Q. Do you know how long she was gone?
A. I don't know. I guess about a year or two.
Q. Did Mrs. Thiede go by herself?
A. Her and Mr. Thiede and the little girl went.
Q. The whole family?
A. Yes, sir.
Q. And you understood they were going to Germany?
A. Yes, sir; I don't know whether they went. They said they were going.
407 Q. Do you remember when Mrs. Thiede was killed?
A. Yes, sir.
Q. Do you remember where you were that evening?
A. Yes, sir; I was up to the industrial army—up to the smelter there.
Q. What time did you go up there?
A. About half past seven.
Q. What time did you return?
A. About half past ten.

Q. Who came with you?
A. My brother.
Q. How do you know it was half past ten?
A. It was just half past ten when we got home.
Q. You noticed the time when you got home?
A. Yes, sir.
Q. Which way did you come, with reference to the Thiede saloon, and how?
A. We came right past there.
Q. State what, if anything, you saw in front of the saloon.
A. I never saw nothing at all, only the light in there.
Q. Was the door of the saloon open?
A. Yes, sir.
Q. State whether or not you noticed the house with reference to the lights.
A. There was a light in the north room.
Q. I will ask you whether or not the defendant ever gave you any instructions when he would go away and leave you there with reference to what you should do around the house.
A. Whenever I was in the saloon I could leave it to come down and do any chores when he was home. I done chores around there all the time, packing water and coal. When he was not home I always got the water and coal in the house.
Q. Who directed you to do that?
A. Thiede.
Q. Look at that piece of timber and state whether you ever saw it before.
A. Yes, sir.
408 Q. Where did you see it?
A. In the brewery.
Q. Whose brewery?
A. Thiede's.
Q. Do you know when it was taken out of the brewery?
A. Yes.
Q. When?
A. Last Sunday.
Q. Who took it out?
A. Me and another young man.
Q. I will ask you if there was a nail there—it was broken off in court.
A. Yes, sir.
Q. Where was that stick of timber in the brewery? Tell the jury as near as you can so that they will understand it with reference to the doors, etc?
A. A piece of the door frame.
Q. What was the width of the door frame?
A. 2 x 10.
Q. Do you remember how high that spot was from the floor.
A. Four feet three inches.
Q. Do you remember how near this edge was from where the door was? Can you illustrate in any way by taking that and showing where it stood with reference to the door?

A. Yes, sir. [Witness indicates how it stood.]
(Judge Cherry offers the board in evidence.)
(No objections. Marked defendant's Exhibit 1.)
Q. You cut this stick out of the door frame?
A. Yes, sir.

Cross-examination by Judge HOWAT:

Q. How old did you say you were?
A. 20.
Q. When was your birth day?
A. 22nd last June.
Q. You have lived there five years?
A. Yes, sir.
Q. What have you been doing? Go to school any part of the time?
A. Yes, sir.
Q. Up to what time?
A. About four years ago since I went to school.
409 Q. What have you been doing since then?
A. Working around.
Q. At what?
A. Farming and brickyards and one thing and another.
Q. What are you doing now; what is your occupation?
A. I am not doing anything just now.
Q. How long have you been idle?
A. A month, I guess.
Q. Been around Thiede's saloon much these days the last month?
A. Not a great deal.
Q. Hang around there a good deal, been there nearly every day for the last month, the saloon where Thiede used to keep?
A. Yes, sir.
Q. Isn't it a fact you have been there nearly every day for the last thirty days.
A. Yes, sir; the last month.
Q. There a good part of the time, weren't you?
A. Yes, sir.
Q. What were you doing there—hanging around?
A. I have been helping them fellows down there that's running it.
Q. Tend bar?
A. Once in a while; yes, sir.
Q. Do they pay you for it?
A. Yes, sir.
Q. Are you hired there regularly the last month?
A. No, sir.
Q. I thought you said you were not doing anything the last month?
A. I have not been doing anything only excepting tending bar there once in a while.
Q. How many days have you been paid for tending bar during the last month or doing any work down there?
(Objection, as immaterial, irrelevant, and incompetent.)
The COURT. He may answer.

Q. How many days have you been paid for assisting these saloon keepers where Thiede used to keep his saloon?

410 A. I never tended a whole day while I was there.

Q. When was it you say you worked for Thiede?

A. About a year ago.

Q. How long at that time did you work for him?

A. About two months.

Q. What were you doing there that two months?

A. Working around tending to the horses and doing chores.

Q. Did you take breakfast at the time with Thiedes?

A. Yes.

Q. Went down there in the morning and stayed all day?

A. Yes.

Q. Were you in the saloon a good part of the time?

A. Yes, sir.

Q. In fact, you were there most of the time, weren't you?

A. Whenever I didn't have much to do I was in the saloon.

Q. You are not a married man?

A. No, sir.

Q. Never saw Thiede treat his wife unkindly at all?

A. No, sir.

Q. Always good and kind to her, wasn't he?

A. Every time I saw.

Q. Never saw him excepting when he was good and kind to his wife?

A. Yes, sir.

Q. And treated her nice?

A. Yes, sir.

Q. When you were that time you say Mrs. Thiede was drunk?

A. I suppose she was.

Q. You said so, didn't you?

A. Yes, sir.

Q. You said she was drunk, didn't you?

A. Yes, sir.

Q. When she slid down behind the counter you locked the doors and left her?

A. Yes, sir.

Q. How long did you lock her in?

A. I don't know; I just locked the door and shut the other one and went home.

411 Q. What time of the day or night was it she got drunk and you locked her in?

A. In the morning.

Q. When did you go back?

A. At night, and Thiede was home.

Q. So far as you know you locked her in all day; that was your intention, wasn't it?

A. I supposed the little girl went home in the afternoon, and maybe went in there.

Q. What time in the morning was it?

A. About 11 or 12 o'clock.

Q. You locked her up and went home, and didn't go near her again till night?

A. No, sir.

Q. It was your intention to lock her up till Thiede came home at night, wasn't it?

A. I didn't want to leave the place open when she was in there that way.

Q. Why didn't you take her home to her house?

A. I didn't suppose I could take her down alone.

Q. Was she a big woman?

A. No, sir; not very big.

Q. She was a very little woman, wasn't she?

A. Quite small.

Q. Where had Thiede gone that day?

A. Went to Salt Lake City, I believe.

Q. To be gone all day?

A. I don't know how long.

Q. And you locked the woman in and went home?

A. Yes, sir.

Q. Didn't take dinner there that day?

A. I wasn't working there at all then.

Q. How did you happen to be there that day?

A. I just passed there.

Q. It was not when you were working?

A. No, sir.

412 Q. When was this? How long ago was it you saw her drunk and locked her up?

A. It must have been about a month or two before this happened.

Q. Where did you get the key to lock her up?

A. It was in the door.

Q. On the inside?

A. Yes, sir.

Q. Both doors?

A. Only one.

Q. What door did you lock?

A. South door

Q. Was the west door locked?

A. No, sir.

Q. Didn't you state you locked the west door also?

A. No, sir; I said I locked the south door and went through the west door.

Q. Didn't you say you locked it?

A. No, sir.

Q. Didn't you state you locked the south door and went to lock the west door?

Judge CHERRY. We object.

The COURT. Proceed.

Judge CHERRY. We except.

The COURT. I understood he went out and locked her in.

Q. Didn't you state you went there and went away and came back about 11 o'clock and found her in this condition?

A. Yes, sir.

Q. You were there in the morning?

A. When he left then I went away.

Q. I thought you were not working for him at the time.
A. Once in a while I tended bar there.
Q. Were you working for him that day?
A. No, sir.
413 Q. How did you come to be there in the morning?
A. I was going past and I just stopped in.
Q. That is the way you wish to be understood to the jury. Didn't you state to the jury that you were there that morning and that Mr. Thiede left his wife there in charge of the saloon and then you went away and came back about 11 o'clock?
A. Yes, sir; I believe so.
Q. Then you were not working for Thiede?
A. No, sir.
Q. What were you doing there that morning?
A. I went up past and just stopped there.
Q. What did you stop there for?
A. Nothing; I just stepped in and was talking to them.
Q. Where were you going that morning?
A. Over to fix a wagon to take home.
Q. Had you fixed the wagon when you came along there?
A. When I came back I had.
Q. Were you bringing the wagon with you?
A. No, sir.
Q. You had taken it home?
A. I just went over to fix it up and then went back to get a team.
Q. Were you on your way home when you saw this woman?
A. Yes, sir.
Q. Just on your way?
A. Home.
Q. So you took it upon yourself to lock the south door and shut the west one?
A. Yes, sir.
Q. And went home?
A. Yes, sir.
Q. Did you go back again that evening?
A. After Thiede come home.
414 Q. What were you doing back there that evening?
A. I always went down in the evening to spend the time when I had nothing else much to do.
Q. Isn't it a fact you have been spending your time in Thiede's saloon during every night and evening?
A. Once in a while; I have been there every evening.
Q. Take the last three years, isn't it a fact you have spent every evening in Thiede's saloon nearly?
A. Yes, sir.

Redirect examination:

Q. Do your father and mother live in that neighborhood?
A. Yes, sir.
Q. They have been living where you describe, two hundred yards west of there?
A. Yes, sir.

415 MARTIN PEARSON, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. Where do you live?
A. Sandy.
Q. What is your business?
A. Merchant.
Q. How long have you lived there?
A. About nine years.
Q. Are you acquainted with the defendant?
A. Yes, sir.
Q. Were you acquainted with his wife in her life time?
A. Yes.
Q. State what relation, if any, you are to the defendant, Thiede?
A. He is my brother-in-law.
Q. In what way?
A. I married his sister.
Q. How long have you know' Mr. Thiede?
A. About nine years.
Q. How long have you know' his wife?
A. About seven or eight years; I can't tell exactly.
Q. Did you know them ever since they came to this country?
A. Yes, sir.
Q. About how long ago did you become his brother-in-law?
A. Five years ago.
Q. Have you been on friendly social terms with the Thiede family since the time you have been married?
A. Yes, sir.
Q. Five years?
A. Yes, sir.
Q. How far is Sandy from where Thiede's place of business was on the 30th of April last?
A. Six or seven miles from Sandy.
Q. I will ask you if during the five years last past you have ever had occasion to visit at Thiede's house?
A. I was there several times.
Q. Can you give the jury any idea how frequently you visited their place?

416 A. I went down there may be once a month, may be *may be* twice a month; I can't tell exactly how often; I went very often.

Q. Did you make any social visits?
A. Yes, sir; our visits were always social.
Q. What day of the week did you usually go?
A. Sundays.
Q. State to the jury what you observed of the conduct of the defendant, Thiede, toward his wife at the time of your visit there.
A. I never did see anything wrong between those two as often as I have been there; never in my presence.
Q. I will ask you if you ever saw him strike her at any time?
A. Never did.
Q. Did you ever see her when she had her face bruised or eye blackened?
A. No, sir; never seen her.

Q. I will ask you to state, if you can, in a general way, if you know anything about what kind of a home they had there, in reference to being furnished; what furnishings they had on the inside of the house.

A. I think they had a very nice home; as nice as any man could have in this country.

Q. Can you give anything on which you base that opinion?

A. In regard to the furniture?

Q. What makes you say it was a nice, cozy home?

A. I will say it is a first-class home for this country.

Q. You don't give any reasons why you think so?

A. No, sir.

Q. You have been in the house, have you?

A. Yes, sir; very often.

Q. Before this homocide?

A. Yes, sir; many a time.

Q. State the last time you saw Mrs. Thiede in life.

A. That was on the night of April 30th.

417 Q. Where did you see her?

A. Down to the house, and then in the saloon.

Q. Just state to the jury what you saw and what took place there, and how you came to go there. State in your own language.

A. Me, brother-in-law Smith, from Sandy, went down to see the industrial army that evening, and when we left the industrial army Smith said——

The COURT. State what you know of your own knowledge.

We went down to Thiede's place to get a drink, and there was no light in the saloon, so I went down to the house and hollered out, Is there anybody home? and Charley hollered and said, Yes, and he and his wife came out, and I said to him, Here is Smith and his wife. So I said, Smith and his wife and me and my wife want a drink. It was kind of chilly that night, and the' both came over the lawn with us up to the saloon, and Mrs. Thiede and my wife went into the saloon first, and Charley and me and Smith were talking in there, and finally we all joined them and had a drink together, and we stopped five to ten minutes, I can't tell exactly how long, and then we all went home. Charley wanted us to stay, but Smith said . We stayed about ten minutes and then went right home.

Q. I will ask you whether you were invited to remain longer by the defendant on that occasion?

A. Yes, sir; we were.

Q. In what sort of a conveyance did you go there?

A. A one-horse rig and a two-seated buggy.

418 Q. Top buggy?

A. I don't think there was any top; it might be.

Q. Whose rig was it?

A. Smith's.

Q. Where did you drive when you first drove down there; where did you first stop?

A. At the Germania smelter first.

Q. When you drove to Thiede's, where did you stop to drink?

A. Right in the middle of the yard, on the road; the county road, I believe.

Q. Can you show there on the map?

[Witness indicates.]

Q. Who got out of the buggy first?

A. I did. There was no one in the saloon when we first came there. I went right down to the residence.

Q. Go through that gateway?

A. Yes, sir.

Q. Walked down to the residence?

A. Yes, sir.

Q. Where did you find Thiede and his wife?

A. Right in the room there.

Q. How close did you come to the door, if you went to the door at all?

A. I think I opened the door.

Q. Which door did you go to, the front door?

A. Yes, sir; kind of a hallway right in there, and maybe, I believe I said, Is there anybody home? and Charley hollered and said, Yes.

Q. Then they came out?

A. Yes, sir.

Q. What time in the evening was that?

A. About 8 o'clock.

Q. What was the appearance of the relation of the defendant, Charles Thiede, and his wife, on that occasion?

A. Friendly.

Q. I will ask you to state whether or not Mrs. Thiede's eyes were red from crying.

A. I couldn't tell that.

419 Q. Did you have a light in the saloon after you went in?

A. Yes, sir.

Q. You lit up the saloon at that time?

A. Yes, sir.

Q. Did you light up the saloon?

A. I couldn't tell who did light it up; it was lighted when I got in there.

Q. Who went in the saloon first, do you remember?

A. I think Mrs. Thiede.

Q. You say you saw the industrial army?

A. Yes, sir.

Q. Where were they camped?

A. At Germania smelter.

Q. Was it the smelter now being operated and used as a smelter?

A. I don't think they were operating the place where they stopped; it was at the old lead works.

Q. The building called the old lead works?

A. Yes, sir.

Q. You visited that camp, I believe you stated?

A. Yes, sir.

Q. Can you tell anything about the number of persons that were there in that army?

A. I should judge there were several hundreds.

Q. You didn't count them?
A. No, sir.
Q. You are only making a guess?
A. Yes, sir.
Q. At the time you were there, what were they doing?
(Objection as immaterial.)
Q. I will ask, were they running around or all camped together?
(Objection as immaterial.)
The COURT. There is no necessity for going into that.
Judge CHERRY. The reason is this: As I stated to the jury in my opening statement, the industrial army were camped near there and were roaming around the country, and that is a reason why there is a probability that someone could have committed this crime besides the defendant.
420 The COURT. I ask you to state your proposition, but you have made no proposition that you would connect any of these parties.
Judge CHERRY. I don't pretend to say I can identify the parties, your honor.
The COURT. I don't mean that.
Judge CHERRY. I want to show the army were camped there, and I want to prove by this witness whether they were quietly and orderly or moving around about 8 o'clock, and what sort of discipline was exercised over them.
The COURT. You may show if you can if any of these parties were in the vicinity of this saloon; if any were coming into the vicinity of this saloon with him show that. As far as the matter of the army camping there, I think that is not material. As to the army running around, I think that is not material. It has already been shown they were there.
Q. What time did you see the industrial army; what time were you there?
A. I think a little after six o'clock.
Q. How long did you remain there?
A. Maybe one and a half hours; something like that.
Q. During the time you were watching them, did you see any members of the organization going in the direction of Thiede's premises?
A. Yes, sir.
(Objection as incompetent and immaterial.)
Q. Did you see any of them going in the direction of Charles Thiede's saloon, or his place?
A. Yes, sir.
Q. How many?
A. I seen several going in that direction, in all kinds of directions; they went in all directions.
421 Cross-examination:
Q. Any of them at Thiede's place when you went over there?
A. I couldn't tell you.
Q. Was there anybody there?
A. I seen several on the road by the bridge there.
Q. Was there anybody at Thiede's saloon or house when you went over there?
A. There were none.

Q. When you went over there the saloon was shut up, was it?
A. No, sir.
Q. Was there any light in it?
A. No, sir.
Q. He was not running the saloon in the dark?
A. The doors were open.
Q. It was not open for business; was there any light in there?
A. No, sir.
Q. He was not there?
A. No, sir.
Q. The doors were open?
A. Yes, sir.
Q. You went down to the house and found himself and wife there?
A. Yes, sir.
Q. You were there five to ten minutes altogether?
A. Yes, sir.
Q. You went to get a drink?
A. Yes, sir.
Q. You and Mr. Smith and the two sisters of the defendant?
A. Yes, sir.
Q. Your wife and Smith's wife?
A. Yes, sir.
Q. Did the ladies get out of the buggy at all?
A. Yes, sir.
Q. How many lamps were lit in the saloon when you got in there?
A. One, I guess.
Q. Did Thiede give you the drinks you wanted?
A. No, sir; Mrs. Thiede.
422 Q. What was Thiede doing?
A. Standing outside of the bar.
Q. How long were you inside of the saloon?
A. As I said before, five to ten minutes.
Q. I understood you to say you were there five to ten minutes altogether.
A. Maybe three or four minutes.
Q. You drove from Sandy—how far were you from home at this place?
A. It took us an hour to get home.
Q. How far?
A. About six or seven miles.
Q. You drove up there for the purpose of seeing the army and going back that evening?
A. Yes, sir.
Q. That was your intention when you left home?
A. Yes, sir.
Q. Never changed that?
A. No, sir.
Q. Did you and Smith have any children at the time?
A. No, sir.
Q. Did Smith have any?
A. He has a boy.
Q. Was he along that evening?

A. I can't remember.
Q. Don't you remember whether the boy was along or not?
A. Not right now.

Redirect examination by Judge CHERRY:

Q. Did I ask what Thiede and his wife were doing when you went and called them at the house?
A. I think they were eating supper.
Q. Tell what you saw.
A. I didn't go into the house, I stopped in the hall way.
Q. What made you think they were eating supper?
A. I saw Thiede come out with a sandwich in his hand.
Q. Mr. Thiede was eating, was he?
A. Yes, sir.

423 Mrs. LOUISA PEARSON, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. Where do you live?
A. Sandy.
Q. How long have you lived there?
A. 4½ years.
Q. What relation are you to the defendant, Charles Thiede?
A. I am a sister to him.
Q. How long did you know Mrs. Charles Thiede in her lifetime?
A. I have known her ever since I am in this country.
Q. Was she here when you came or did she come after you?
A. She came before me.
Q. You got acquainted with her after you came her'?
A. Yes.
Q. How long have you been here?
A. 4½ years.
Q. In the United States?
A. Yes, sir.
Q. Were your relations with Charles Thiede and his wife friendly?
A. O, yes.
Q. All the time?
A. Yes, sir.
Q. During the time you have been in this country?
A. Yes, sir.
Q. I will ask you whether or not you ever visited at Charles Thiede's house during that time?
A. O, I was down there at his house three or four times every month.
Q. Were they ever at your place?
A. Yes, sir.
Q. Did you make regular social visits or were they just simply passing by?
A. We were good friends every time we came together.
Q. Tell the jury what you know with reference to the defendant' treatment of his wife at the times you saw them together when you visited at their house.
A. Every time I came to that place they were feeling happy together.

424 Q. What do you mean by feeling happy?

A. They were both good together; I never saw them have trouble together when I came down there.

Q. Did Mrs. Thiede visit any at your house at Sandy?

A. Yes.

Q. How often would she come there?

A. Several times down there.

Q. Have they any children?

A. A little girl.

Q. Did Charley and her ever come together to your house to visit?

A. Yes, sir.

Q. They have been there together?

A. Yes, sir.

Q. To make you a visit?

A. Yes, sir.

Q. Do you remember when, any particular time or occasion?

A. It was twice last winter and twice last summer.

Q. Would they stay and eat meals at your house?

A. Yes, sir; late in the evenings with me.

Q. At the time you visited their house did you ever eat meals there?

A. Every time I went down to their place.

Q. State what sort of a meal with reference to the amount of provision; was there plenty of food or not; what was the kind of a meal you had there usually?

A. We had some chickens there, and meat all the time I go to meals.

Q. I will ask you whether there seemed to be furnished plenty of food?

A. Plenty all the time I came down there.

Q. What kind of a home did they have where they lived?

A. Nice home, well fixed up.

Q. Can you tell the jury anything you observed about that home, the inside of it, what the furnishings were?

A. Yes, sir.

Q. Tell what it was.

A. They had all plush furniture and carpets that I can never
425 get in my house; they were very well fixed. He did it that time they were in Germany to make it comfortable when they came back again; he had the whole house fixed up for her.

Q. Tell whether there was anything with reference to pictures and paintings on the wall.

A. Lots of pictures up there.

Q. Had they any musical instruments?

A. There were two or three music boxes he bought for her when she felt lonesome down there.

Q. I will ask you if you know anything about him making her any presents at any time?

A. Yes, sir; he made her presents of jewelry.

Q. How do you know that?

A. She showed it to me.

(Judge Howat moves to strike out the answer of the witness in regard to presents having been made.)

The COURT. You can not state what she told you.

Q. Is that all you know about any present, what Mrs. Thiede told you?

A. I was there lots of times when drummers came there selling things there, and every time I saw Charley bought something from them for her.

Q. I mean any especial present, such as a ring, or a gold watch, or something of that kind.

A. Yes, sir; I know Charley gave her a gold watch once for a present.

Q. How do you know it?

A. He showed it to me when he was going to give it, and he did, and she got a gold watch after that.

(Objection as incompetent. Objection sustained.)

Q. State the facts as near as you can about the gold watch;
426 what you saw with your own eyes, not what Thiede told you, but what you actually saw.

A. Mrs. Thiede said her husband gave her that gold watch.

The COURT. That may be stricken out. The court has instructed you to state what you know of your own knowledge and not what Mrs. Thiede or anyone told you.

Judge HOWAT. She may go on and tell all about it, I don't care.

Q. Did you see her with the watch?

A. Yes, sir.

Q. Did you ever see that watch before she got it?

A. Yes, sir.

Q. Where?

A. Charley Thiede showed it to me.

Q. Where was it?

A. Down to the house before he gave it to her.

Q. That was before you saw her have it?

A. Yes, sir.

Q. Do you remember the occasion or anything about the time when it was?

A. I couldn't remember that.

Q. Do you know anything about her going back to Germany?

A. Yes, sir.

Q. When was that?

A. I can't tell exactly; about two years ago.

Q. Two years ago she came back to this country?

A. She stayed only one year down there in Germany.

Q. Who went with her, do you know?

A. Her husband and the little girl went with her.

Q. Do you remember the occasion and time of Mrs. Thiede's death?

A. Yes, sir.

Q. When did you last see her in her lifetime?

A. I saw her the night before she got killed.

427 Q. What night was that, do you remember?

A. Monday night.

Q. Where did you see her?

A. Down to her house.

Q. How did you come to see her there?

A. My husband and sister and brother in-law went to see the industrial army in Cottonwood. After we came back my brother-in-law said, let's have a glass of beer.

Q. Tell what you did.

A. After we came back from the army we went down to Thiede's saloon to have a glass of beer.

Q. Did you go to the house?

A. Not me; my husband did.

Q. Where did you stay?

A. By the saloon in the buggy.

Q. Where did you first see Mrs. Thiede?

A. Coming out of the house when my husband went after her.

Q. Anybody else?

A. No, sir.

Q. Where was Charley Thiede?

A. With his wife in the house eating supper together.

Q. You didn't see him in the house?

A. I could see him going out of the house.

Q. You don't know what they were doing only from what someone told you?

A. No, sir.

Q. Who did you see coming out of the house?

A. Mrs. Thiede and her husband.

Q. Anybody else?

A. My husband.

Q. Where did they go?

A. To the saloon.

Q. Did you get out of the buggy?

A. Yes, sir.

Q. Where did you go?

A. I went into the saloon with Mrs. Thiede together.

Q. Anybody else in there?

A. No, sir.

428 Q. Where was Charley Thiede?

A. Outside.

Q. Who else came in?

A. My sister and husband.

Q. Smith come in?

A. Yes, sir.

Q. How long did you stay there?

A. Seven, eight, or nine minutes; I couldn't tell how many minutes; it was not long.

Q. About what time was it?

A. About 8 o'clock.

Q. Was it dark?

A. It was getting dark.

Q. Was there a light in the saloon?

A. I couldn't remember.

Q. Did you see the defendant Thiede and his wife talking to each other any?

A. Yes, sir.

Q. They talked to each other there.
A. Yes, sir.
Q. You all talked together.
A. Yes, sir.
Q. What was the nature of your conversation as to being friendly?
A. They were friendly together that night.
Q. All of your friendly?
A. Yes, sir.
Q. All good-natured?
A. Yes, sir.
Q. No trouble then?
A. No, sir.
Q. I will ask you if at any time during your acquaintance with Mrs. Thiede you ever saw Mrs. Thiede with her eyes blacked or her face bruised or anything of that kind?
A. Yes; we saw her once with a blue eye.
Q. Do you know how she received that injury?
A. I asked her one afternoon.
Q. Do you only know it from what she told you?
A. She told me she hurt herself from falling down.
The COURT. I have instructed the witness not to tell what was told her.
429 Q. Do you know how she got hurt?
A. I don't know where she got it.
Q. You didn't see it?
A. No, sir.
(Judge Cherry asks that be stricken out what the deceased told her.)
The COURT. That may go out.
Q. Was that the only time you ever saw her with a black eye?
A. Yes, sir.

Cross-examination by Judge HOWAT:

Q. When was that?
A. Three or four months ago.
Q. Where was it black?
A. Here.
Q. You asked her how she got it?
A. Yes, sir.
Q. She told you she fell down?
A. Yes, sir.
Q. When was this house they were living in when Mrs. Thiede was killed first used as a dwelling house?
A. I don't understand. Last summer.
Q. When was it Mrs. Thiede came back from Germany?
A. Last spring.
Q. Didn't she bring lots of nice things with her from Germany with her when she came back?
A. I didn't see any.
Q. She didn't bring back anything?
A. She never showed me anything.
Q. Do you know her people in Germany?
A. No, sir.

Q. Did her people live there?
A. Yes, sir.
Q. Mother lives there, don't she?
A. Yes, sir.
Q. And all her friends and relatives?
A. Yes, sir.

Q. Now, this time you came down there the evening before she
430 was killed you were there six or seven or eight or nine minutes?
A. Yes, sir.

Q. Altogether?
A. Yes, sir.

Redirect examination:

Q. You answered Judge Howat it was three or four months ago; did you mean before the killing or three or four months from now? Do you mean three or four months before this trouble down there?
A. Yes, sir.
Q. You don't mean three or four months from this time?
A. No, sir.

431 JAMES BLOM, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. Where do you live?
A. Murray.
Q. Do you know Charles Thiede?
A. Yes, sir.
Q. How far do you live from where his place is?
A. About seven or ten minutes walk.
Q. How long have you known him?
A. From the first time he came there.
Q. How long have you lived there?
A. Pretty close eight years.
Q. You have known him ever since he has lived there.
A. Yes.
Q. How long was that?
A. I don't know.
Q. Several years has it been?
A. Six; yes, sir.
Q. Do you know his wife?
A. Yes, sir.
Q. Did you ever work for Thiede?
A. Yes, sir.
Q. When was the last time you worked for him?
A. About one year, I guess from now.
Q. What did you do?
A. Everything
Q. What do you mean by that?
A. Helping him in his garden, and making beer, and helping him outside on his horses.
Q. Worked in the brewery, did you?
A. Yes, sir.

Q. How long did you work there?

A. One time six day', and one time five day', and one time one day, and help him some a little bit.

Q. You worked by the day, did you?

A. Yes, sir.

Q. Did you work by the month at any time?

A. No, sir; I worked a little bit at a time, some five day' some four day'.

432 Q. Worked off and on at different times?

A. Yes, sir.

Q. Where did you take your meals?

A. At home.

Q. You didn't eat any meals with Thiede, then?

A. Only once or twice.

Q. Where did you eat—in his house?

A. Down in his house.

Q. In the brick house?

A. Yes, sir.

Q. Did you see Mrs. Thiede when you were working around there at these times?

A. Every day.

Q. She would be around where you were working?

A. From the brewery and down to the house.

Q. You would see her around the premises?

A. Every day while I was there.

Q. State if you ever saw any bruises or wounds or cuts on her face these times you were working there.

A. Never.

Q. State if you know whether she ever drank liquor?

A. No, sir; I didn't see her.

Q. She never drank any.

A. Yes, sir.

Q. Do you know she drank?

A. Beer or whiskey.

Q. She drank beer; did she drink anything else?

A. Beer and whiskey.

Q. Do you know what liquor means?

A. Yes, sir.

Q. You said no, when I asked liquor; do you know what liquor means?

A. Yes, I know what liquor is.

Q. Did you ever see Mrs. Thiede when she was under the influence or affected by liquor that you know of?

A. Yes, sir.

Q. When was that?

A. I don't know how long ago.

Q. Can you tell when it was?

A. Yes, sir; not this winter, the winter before.

433 Q. While you were working there?

A. Just when I was down there.

Q. The winter before last winter?

A. Yes, sir.

Q. Tell what you saw.

A. I see I was in there one day, she was alone home. I asked for a drink and she gave me a drink, and when I had enough I wanted to get home, and she said, Stop and get another one, and she gave me another one, and I said, I don't want any more. She said, Come in, I want to set 'em up, and she set 'em up, and I set 'em up again there, and I drink once and she drink twice, and I said, I don't want any more, and I was going home, but she was a little bit drunk.

Q. State the last time you saw her alive?

A. The day before.

Q. What day was that?

A. That day she was dead; the night, the same day, the evening.

Q. What time were you there?

A. About ten o'clock, ten minutes to ten, or ten o'clock.

Q. Did you notice the time?

A. No, sir; I don't know the time.

Q. Did you look at your watch to tell exactly the time?

A. I didn't look at my watch.

Q. Who went with you?

A. My wife went with me; I was alone inside and my wife was outside.

Q. How did you go down there?

A. I was just going in to get a drink——

Q. How did you go from your place?

A. I was going from the store——

434 Q. Were you walking or riding?

A. Riding.

Q. What in?

A. In my wagon.

Q. You and your wife?

A. Yes, sir.

Q. What road?

A. From Murray up from the depot.

Q. Come from the north?

A. Yes, sir.

Q. By the vinegar factory?

A. Yes, sir.

Q. Across the bridge?

A. Yes, sir.

Q. Turned down to Thiede's place?

A. Yes, sir.

Q. Tell what you saw and done there.

A. I saw Mrs. Thiede at her place between the brewery and saloon

Q. Tell what you did.

A. I turned my horse and tied it on a post by the saloon.

Q. Then you got out?

A. Yes, sir.

Q. Then where did you go?

A. Down to Charles Thiede's.

Q. Where was Charley?

A. Down by the pig pen, to look after his pigs.

Q. Down the road farther?

A. Yes, sir.

Q. Then what did you do after that?

A. He looked after the pigs for awhile; then I said, Charley, hurry up and go into the saloon and give me a drink, I want to go home. He had no time; he was looking after that pig. Then I was going anyhow——

Q. I want to know where you went and what you did.

A. I went to the saloon.

Q. Who with?

A. Alone.

Q. Then what did you do?

A. I said to Mrs. Thiede, Go and give me a glass of beer.

Q. Did she?

A. Yes, sir.

435 Q. Then what did you do?

A. I said I drink my beer.

Q. What did you do after you drank your beer?

A. I was standing there for awhile and she took a glass from there—Mrs. Thiede took a glass to my wife outside in the wagon.

Q. Your wife didn't come out?

A. No, sir.

Q. Then what did you do?

A. I was standing there alone for a couple of minutes.

Q. Then what?

A. Then Charley come in.

Q. Did you talk with him any?

A. Yes, sir.

Q. Was his wife present?

A. No, sir; she was outside.

Q. Where did you go with Charley when he came; did you go back into the saloon or stand outside?

A. I was back in the saloon.

Q. Then what?

A. I just took a little bit of something.

Q. Then where did you go after you talked with him?

A. Then I was going home again, out to the wagon.

Q. Was it dark?

A. Yes, sir.

Q. Were the lamps lit in the saloon?

A. Yes, sir.

Q. Did you know what time it was when you got home; did you look?

A. I didn't look at my watch.

Q. You are only guessing at the time, then?

A. Yes, sir.

Q. You don't know what time it was when you went by there?

A. No, sir.

Q. You think it was about 10 o'clock?

A. Yes, sir.

Q. Did you hear Mr. and Mrs. Thiede talk to each other any during the evening while you were there?

A. Yes, sir; before I went home she come in the saloon, too.

436 Q. Did they talk to each other any?

A. Yes, sir.
Q. You heard them talking to each other?
A. Yes, sir.
Q. Did they talk English or German?
A. German.
Q. Could you understand German?
A. Yes, sir.
Q. You talk German?
A. Yes, sir.
Q. Was there anything there that was unpleasant between him and his wife?
A. Nothing.

Cross-examination by Judge HOWAT:

Q. You think it was about 10 o'clock you went down there that evening?
A. Yes, sir.
Q. How long ago is it since you say you saw Mrs. Thiede when you thought she was under the influence of liquor?
A. About a year this winter.
Q. Two years when the winter comes?
A. Yes, sir.
Q. She was alone there?
A. Yes, sir.
Q. Where was Charley that day?
A. I guess he was in town.
Q. And she was left there tending bar?
A. Yes, sir.
Q. What did you and she drink?
A. She drunk beer that day.
Q. What did you go in for?
A. To get a drink.
Q. It was beer you drank?
A. Yes, sir.
Q. She gave you the beer?
A. I took the first glass.
Q. Did she drink then, too?
A. Yes; she drunk and took one——
Q. How many glasses did she drink at that time?
A. I guess four or five.
Q. You did, you mean?
A. Yes, sir.
Q. How many did she have?
A. I don't know; she had more.
Q. Where did you come from that day you came there?
A. From the store.
437 Q. Had you been having any down there at Murray?
A. Not any down there.
Q. That was the first drink you had that day?
A. Yes, sir.

Q. Was that the only time you ever saw her under the influence of liquor?

A. The only time.

The court gave the customary admonition to the jury and adjourned till 2.00 p. m.

438 WEDNESDAY AFTERNOON.

Mrs. LORETTA BLOM, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. Loretta Blom.
Q. Where do you live?
A. Murray.
Q. Do you know Charles Thiede?
A. Yes, sir.
Q. Did you know his wife?
A. Yes, sir.
Q. How far do you live from him?
A. Half a mile.
Q. When did you last see Mrs. Thiede in her lifetime?
A. Monday.
Q. What time of the day?
A. Nine or ten o'clock at night.
Q. Where did you see her?
A. At her home by the saloon.
Q. Did you talk with her any?
A. Yes, sir.
Q. Did you see Charles Thiede there?
A. Yes, sir.
Q. Did they talk together that evening?
A. Yes, sir.
Q. State what she did when you went there. Who went with you first down there?
A. My husband.
Q. James Blom?
A. Yes, sir.
Q. What did you do when you went there?
A. Drank a glass of beer, that's all.
Q. How long did you stay there?
A. Half an hour.
Q. Then where did you go?
A. Home.
Q. Do you know what time it was?
A. About 10 o'clock.
Q. Did you look at any timepiece?
A. No, sir.
Q. Where did you come from?
A. From Gilbert's store on State road.
Q. Did you see Mrs. Thiede that day before this time?

A. Yes, sir; she was up to my place.
439 Q. What time did she come there?
A. About 3 o'clock.
Q. How long did she stay?
A. Till six o'clock.
Q. Did she visit with you that afternoon; did she take off her things and stay with you?
A. No, sir.
Q. Did she have on a hat and cloak?
A. Yes, sir.
Q. Stayed and talked to you at that time?
A. Yes, sir.
Q. State whether she was in a good humor or whether sad or sorrowful while she was at your house. Tell the jury how she acted while she was up there.
A. She was good when she left my house.
Q. What do you mean by that?
A. She talks good to me when she left.
Q. I want to find out how she acted the whole afternoon she was there. Did she cry any?
A. Yes, she cried once.
Q. When she went away she was in a good humor?
A. Yes, sir; she was good.
Q. Did you ever visit at her house?
A. Yes, sir.
Q. How many times?
A. Often.
Q. Do you speak German?
A. Yes, sir.
Q. Did she speak German?
A. Yes, sir.
Q. Did you ever eat a meal there?
A. Sometimes.
Q. Did you ever eat there when Thiede ate at the table?
A. Yes, sir.
Q. When they were all there?
A. Yes, sir.
Q. Did you ever see any trouble between Thiede and his wife when you were around there at any time?
A. No, sir.
440 Q. How long have you lived in that neighborhood?
A. About seven years.
Q. Can you state about how often you saw Mrs. Thiede in that time?
A. Pretty nearly every week.
Q. Were you and she good friends during all the time?
A. Yes, sir.
Q. State if you ever saw any wounds or bruises on her face.
A. Yes, sir; I seen once.
Q. How many?
A. A blue eye.
Q. How often did you see that?

A. Once.
Q. Whereabouts was it?
A. Right here.
Q. Under the eye?
A. Yes, sir.
Q. You mean it was bruised—had been hurt?
A. Yes, sir; she told me——
Q. Was it swelled up so that the eye was closed?
A. No, sir; just blue.
Q. Was the skin broke?
A. No, sir.
Q. That is the only time in all the time you have been acquainted with her you noticed her having a blue eye?
A. That is the only time.
Q. What direction did you live from Thiede's saloon?
A. South.
Q. Go up the hill up the county road?
A. Up that road where Thiede lives.
Q. The road that runs south up the hill?
A. Yes, sir.

Cross-examination by Judge HOWAT:

Q. When did you see her with the blue eye?
A. A long time before; a very long time before.
441 Q. Can you state how long?
A. Last summer.
Q. A year before she was killed?
A. Yes, sir.
Q. The day before she was killed she came to your house about 3 o'clock?
A. Yes, sir.
Q. And stayed three hours at your house?
A. Yes, sir.
Q. Did she have her cloak on?
A. She had a cape on.
Q. And a hat?
A. Yes, sir.
Q. She didn't take them off at all, did she?
A. No, sir.
Q. Ever been there before, visiting you?
A. Yes, sir.
Q. Did she take off her hat and cloak when she came before and saw you?
A. Yes, sir; sometimes, not always.
Q. Did she ever stay three hours before without taking off her hat or cape?
A. Yes, sir.
Q. When was that?
A. Last summer.
Q. You say she was crying when she was there?
A. No, sir.

Q. Didn't she cry at one time?
A. Yes, sir; this Monday.
Q. This last Monday?
A. Yes, sir.
Q. Was she crying when she came there?
A. Yes, sir; she was crying.

442 Mrs. MINNIE SMITH, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. Minnie Smith.
Q. Where do you live?
A. Sandy.
Q. Are you acquainted with Charles Thiede?
A. Yes, sir.
Q. Were you acquainted with Mrs. Thiede in her lifetime?
A. Yes, sir.
Q. What relation are you to Mr. Thiede?
A. He is my brother.
Q. How long have you known his wife, before she was killed?
A. Seven years.
Q. I will ask you if you knew her ever since she came to this country?
A. Yes, sir.
Q. Did you know her in Germany?
A. No, sir.
Q. She was a native of Germany, was she?
A. Yes, sir.
Q. Your family and Thiede's family and yourself are natives of Germany, are you?
A. Yes, sir.
Q. State when you saw Mrs. Thiede last in life?
A. April the 29th, I saw her last in life.
Q. The last day of April?
A. The last day of April.
Q. What day of the month?
A. 30th of April.
Q. What day of the week?
A. I can't remember that.
Q. Do you remember whether it was Sunday, Monday, or Tuesday?
A. It was on Monday.
Q. What time in the day did you see her?
A. Between seven and eight o'clock.
Q. Where did you see her?
A. In the saloon.
443 Q. Down at their place where they live, near Murray?
A. Yes.
Q. State how you came to go there and who went with you, if anyone?
A. We went down to see the industrial army, me and my husband and Mrs. Pearson and her husband.
Q. How did you go?
A. In a buggy.

Q. Did you go from where the industrial army were camped to Thiede's saloon?

A. Yes, sir.

Q. State when you drove down there who you saw, if anyone, around the saloon when you drove up?

A. The saloon was dark; Mr. Pearson jumped out of the buggy and went down to the kitchen door and Mrs. Thiede come out.

Q. Who did?

A. Mr. and Mrs. Thiede.

Q. Both came out?

A. Yes, sir.

Q. Where did they go?

A. They went into the saloon.

Q. Where were you and your husband and Mrs. Pearson at that time?

A. In the buggy.

Q. They came up to where you were?

A. Yes, sir.

Q. What then happened?

A. Mrs. Thiede went into the saloon and lit the lamp.

Q. Anybody else go in?

A. Yes; Mrs. Pearson, myself, and Mr. Smith.

Q. All got out and went in?

A. All got out and went in.

Q. Do you remember whether you hitched your horse or not, tied your horse?

A. I stayed in the buggy while Smith went in the saloon; when he came out he went into the buggy and I went in the saloon; I can remember that.

Q. I will ask you whether they lit up the saloon after you went in?

A. Yes, sir; Mrs. Thiede lit up the saloon.

444 Q. What did you do while you were in the saloon?

A. We talked.

Q. Anything else?

A. I took a sandwich, I can remember.

Q. Did you drink anything?

A. Drank some beer.

Q. Chatted any?

A. Yes, sir.

Q. Hear any conversation between Thiede and his wife?

A. No, sir.

Q. Don't remember them talking to each other?

A. No, sir.

Q. They were both there?

A. They were both there.

Q. Can you state how they acted toward each other with reference to being friendly or unfriendly?

A. Friendly.

Q. Do you know how long you stayed there?

A. I guess ten minutes.

Q. I mean from the time you got down there until you went away?

A. I don't know; we didn't stay very long; I should say from ten to fifteen minutes.

Q. I will ask you if you could tell from conversing with Mrs. Thiede and hearing her talk whether she was sad or in good temper, or in what manner did she appear while you were present? Did she appear in a good humor; you saw nothing to indicate anything different?

A. No, sir.

Q. I will ask you if you saw her dead body the next day?

A. Yes, sir.

Q. You heard of her death the next morning, did you?

A. Yes, sir.

Q. And did you go up there from your place to the Thiede place?

A. Yes, sir.

445 Q. What time did you get there?

A. About five o'clock; between four and five.

Q. Pretty early in the morning?

A. Pretty early.

Q. Were you there before the sheriff came?

A. No; Sheriff McQueen was not there; Montgomery was there.

Q. You didn't see sheriff McQueen, you mean?

A. Yes, sir.

Q. Did you go and look at her body when you came there?

A. I just looked at her feet.

Q. Where was she when you saw her?

A. On the billiard table.

Q. In the saloon?

A. Yes, sir.

Q. Was the body covered?

A. The body was covered.

Q. Did you look at her face?

A. No, sir.

Q. You just saw her feet?

A. Yes, sir.

Q. Were her feet covered?

A. Yes, sir; but I took the cover off and looked at them?

Q. Did she have her shoes on?

A. She had her shoes on.

Q. What was the condition of her shoes with reference to being clean or soiled?

A. Her shoes were muddy?

Q. Who went with you down there that morning?

A. Mr. Smith, Pearson, and his wife.

Q. You all went back again, the same party that had been there the evening before?

A. Yes, sir.

Q. How long did you stay that morning?

A. I guess an hour.

Q. Did you see Mr. Thiede there at that time?

A. Yes, sir.

Q. Was he at the time you saw him under arrest?

A. Yes, sir.

Q. Did you ever visit at their house?

A. Yes, sir; often.

446 Q. Did they ever visit at your house?

A. Yes, sir.

Q. How frequent were those visits made back and forth?

A. When I came to see Mrs. Thiede we were always on good terms.

Q. Can you tell how often you visited back and forth?

A. About twice in a month, something of that kind, sometimes more.

Q. On any particular day of the week, do you remember?

A. Sometimes Saturday, when I would go to town and stop and call.

Q. Did they ever come to your house?

A. Yes, sir.

Q. On any particular day did they come to your house?

A. Not very particular.

Q. Did Thiede and his wife ever come to your house to visit together?

A. Yes, sir; New Year's day dinner.

Q. Two years ago?

A. Two years ago.

Q. Any particular occasion? Did you have anything extra going on at your house?

A. Sometimes we have.

Q. I mean on that New Year's day?

A. New Year's dinner we had.

Q. You had invited them?

A. Yes, sir.

Q. Did they bring the little girl?

A. Yes, sir.

Q. Do you remember any other time he and his wife were at your house?

A. Yes; but I can not say what day.

Q. Did you ever eat a meal in their house?

A. Very often.

Q. Do you remember about the last time you ever ate a meal there?

A. Yes, sir; in the afternoon.

Q. What date?

A. I can't remember.

Q. I mean how long before this matter happened was it?

A. It was the first of April, in the afternoon.

447 Q. What did you eat there?

A. I had some coffee with Mr. and Mrs. Thiede.

Q. Both of them were there?

A. Yes, sir.

Q. State to the jury if in all your visits there, when you were calling there, when they were together any time you visited there, or happened to to be there when they were together, state to the jury whether or not you have ever heard them in a quarrel or dispute.

A. I never heard them quarrel or dispute.

Q. Did you ever see Mrs. Thiede with her face bruised or injured in any way?

A. No, sir.

Q. Do you remember the occasion of Mrs. Thiede going to Germany?

A. Yes, sir.
Q. They all went, I believe?
A. Yes, sir.
Q. Do you remember when that was?
A. I can not tell the date; I think it was in October, three years ago.
Q. You don't remember and have no way of refreshing your recollection?
A. No, sir.
Q. Do you know how long they were gone?
A. Mr. Thiede was not gone but two or three months, but Mrs. Thiede stayed a year.
Q. And then came back?
A. Yes, sir.
Q. Do you know when the brick house was built?
A. Yes, sir.
Q. Was that built before she went to Germany or afterwards?
A. It was built afterwards.
Q. After she came back from Germany?
A. No, sir; while she was in Germany Mr. Thiede built it.
448 Q. Do you know whether it was finished up ready for occupancy before she came back from Germany?
A. It was all finished up before she came back.
Q. Do you know whether there was any furniture got for it before she came back?
A. Yes, sir.
Q. You have been in the house often, haven't you?
A. Yes, sir.
Q. Can you state in a general way to the jury about how it was furnished inside?
A. The house was furnished very nice.
Q. State what was inside of the house.
A. The parlor had a red plush parlor set, and there was a nice bedroom set and kitchen furniture; everything that belongs to a house.
Q. What about carpets?
A. The rooms were all carpeted, only the kitchen.
Q. What about any pictures or portraits; anything of that kind?
A. There were pictures there of all kinds; nice pictures.
Q. How many, do you remember?
A. Two or three dozen; pictures in every room.
Q. Do you know anything about any musical instrument; anything of that kind?
A. There were three or four music boxes.
Q. Was there any other ornaments I have not spoken of?
A. There were lots of nice ornaments there.

Cross-examination by Judge HOWAT:

Q. You say it was between seven and eight o'clock that evening?
A. Yes, sir.
Q. Can't you tell nearer than that?
A. No, sir.
449 Q. Show on the map where the horse stopped.
A. We stopped near the residence.

Q. When you say Smith went into the saloon and you stayed in the buggy, and then he came out and stayed in the buggy and you went into the saloon, where was the horse then?

A. Between the residence and the saloon.

Q. Not close to the saloon?

A. Not close to it.

Q. You were there about ten minutes altogether, you think?

A. Yes, sir.

Q. 10 or perhaps 15?

A. Yes, sir.

Q. You were there only long enough to get a sandwich and a glass of beer; was that all?

A. Yes, sir.

Q. How long had Thiede got back from Germany before Mrs. Thiede came back?

A. I don't know that.

Q. They went away together?

A. Yes, sir.

Q. Didn't come back together?

A. No, sir.

Q. Did you see the remains of this Mrs. Thiede after she was killed?

A. Yes, sir.

Q. Where?

A. On the billiard table.

Q. Is that the only time?

A. In the undertaker's office.

Q. Down there you simply lifted the cover and looked at her feet?

A. That is all.

450 FRITZ REIPEN, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?

A. Fritz Reipen.

Q. Where do you live?

A. Salt Lake City.

Q. Were you acquainted with Mrs. Charles Thiede in her lifetime?

A. Yes, sir.

Q. Do you know Charles Thiede?

A. Yes, sir.

Q. How long have you known either one of them?

A. Something over six years.

Q. Did you know where their place of business was?

A. Yes, sir.

Q. Had you ever been there?

A. Yes, sir.

Q. I will ask you if you have ever seen either one of them in Salt Lake City during those six years?

A. Yes, sir.

Q. Where was your place of business during that time?

A. I had a place of business on Commercial street, and afterwards on Second south.

Q. I didn't mean the location, but what city?
A. Salt Lake.
Q. All this time?
A. Yes, sir.
Q. How frequently did you see Mrs. Thiede in the city during this time you knew them?
A. Perhaps twice a month.
Q. Were you on friendly and intimate terms with her and Charles Thiede during this time?
A. Yes, sir.
Q. Where would you see her?
A. Generally in my place of business.
Q. Would she come to your place of business when she would come to the city?
A. Yes, sir.
451 Q. Did you have any business relations with her?
A. No, sir; only she was eating there generally in my place.
Q. What kind of a business did you keep?
A. I had a saloon with a restaurant connected with it.
Q. When she would come to your place of business did you ever have any conversation with her?
A. Yes, sir.
Q. Did you on all the occasions she would come into your place?
A. Most all the time; it was seldom I didn't.
Q. All the times you remember seeing her, did you ever see her with her face bruised, or a black eye, or any wounds about her person?
A. No, sir; I believe not.
Q. Did you ever see her at her home near Murray?
A. Yes, sir.
Q. How often have you seen her down there?
A. Only once.
Q. Do you remember how long ago that was?
A. It was in 1892, Sunday afternoon.
Q. What was the occasion of your seeing her?
A. I just went out there for a visit.
Q. On what day?
A. I think on a Sunday afternoon.
Q. In 1892?
A. I believe it was.
Q. Who went with you?
A. A gentleman from Cheyenne, a liquor dealer, went with me.
Q. Did you go to visit the family or to see Mr. Thiede?
A. And the family, both.
Q. Did you take a meal there?
A. Yes; we had coffee there in the afternoon.
Q. Where?
A. In Charles Thiede's house.
Q. Was Charley present with his wife?
A. Yes, sir.
452 Q. Did you notice any wounds or bruises on Mrs. Thiede at that time?

A. No, sir.

Q. State what the apparent relation between the two parties was at that time as to being friendly?

A. Yes; they were friendly.

Q. Did they talk to each other any in your presence?

A. Yes.

Q. Was that after the brick house was put up?

A. No, sir; it was before.

Q. Are you certain now what year it was you went down there?

A. I believe it was 1892. I never saw the brick house. I never was down there since that was built.

Q. Do you know anything about her and Thiede and the little girl making a visit to Germany?

A. Yes, sir.

Q. Do you know when that was?

A. That was in 1892.

Q. When they went, or when they came back?

A. I believe both. I believe they went in 1892 and came back in 1892. I know they came back in 1892.

Q. Have you any way of refreshing your recollection as to when they came back?

A. I can't tell exactly when Thiede came back, but I know when she came back, exactly.

Q. When was it she came back, if you can remember?

A. It was in July, 1892, when she came back.

Q. How do you know that?

A. Mr. Thiede sent her a ticket on the 2nd of July, 1892.

Q. The 2nd?

A. 2nd or 5th; I am not sure.

Q. Have you any way of refreshing your recollection?

A. Yes, sir; at that time Thiede got a letter and he didn't have
453 money enough. He got a letter or telegram to send her a ticket immediately to New York, that she was there, and he come to me and said——

Q. Tell me what you did?

A. I loaned him $20 to buy a ticket.

Q. Do you know he bought a ticket?

A. I went with him.

Q. Where?

A. The Union Pacific ticket office.

Q. Did you see the ticket bought?

A. Yes, sir.

Q. Did you pay $20 on the ticket at that time?

A. I gave it to Thiede.

Q. You think she came back soon after that ticket was sent?

A. Yes, sir.

454 CHARLES SHARP, a witness for the defense, examined by Judge Cherry, testified as follows:

Q. Where do you live?

A. About four miles southwest of Murray.

Q. Do you know Charles Thiede?
A. Yes, sir.
Q. How far from Thiede's saloon?
Q. About three and a half miles from where I now live.
Q. Where did you live about the last of April last spring?
A. About one and a half miles from Thiede's brewery.
Q. How long have you known Thiede?
A. About five years.
Q. Did you know his wife in her lifetime?
A. Yes, sir.
Q. How long did you know her?
A. I met them both about the same time when I came to this country.
Q. What is your business?
A. Farmer.
Q. Has that always been your business since you have been down there?
A. Yes, sir.
Q. I will ask you if you ever worked any for Charles Thiede?
A. Yes, sir.
Q. When you say you are a farmer do you mean you own a farm?
A. No, sir.
Q. You rent, do you?
A. Yes, sir.
Q. Have you ever worked at anything else besides farming while you were down there?
A. Yes, sir; I have worked several times for different parties while I was not busy on the farm.
Q. What work did you do for Charles Thiede?
A. Well, I ploughed and scraped on the hill there, and we were tearing down some old buildings and removing them and putting them up again. And I helped him put up ice for three winters.
455 Q. Do you remember when the brick house was built there?
A. Yes, sir.
Q. Did you do any work for him at that time?
A. Off and on every summer and winter I have worked for him at different times.
Q. Do you remember whether you ever assisted in setting out any trees or graded the lot or anything of that kind around the house?
A. I went with Mr. Thiede after some trees, and also helped him set up a part of them.
Q. Do you remember when that was?
A. I don't know exactly.
Q. Was it spring or fall?
A. I couldn't tell.
Q. About how long ago was it you helped put up the trees?
A. About two years ago.
Q. From now?
A. I think so.
Q. Do you remember who was working there at that time; anyone else?
A. This Mr. Stryker was with us when we got the trees.

Q. Was he working for Thiede around there about this time?
A. I think so. He was around there doing something.
Q. Was that about the time you were working around the house?
A. Yes, sir.
Q. Was Mrs. Thiede there then do you know?
A. She was there on that day.
Q. Do you remember eating at Thiede's house with the family?
A. Yes, sir; I have eaten there a number of times.
Q. Do you ever remember eating there when Stryker ate with you?
A. Stryker ate supper with us that evening.
Q. Do you remember eating there at any time last fall a year ago when Stryker was there?
A. I don't.
456 Q. Or in the winter?
A. I don't remember.
Q. Do you remember eating there when Stryker ate at the table with you?
A. When we got these trees Stryker ate supper there. We got the trees at Mr. Root's, and along in the afternoon I know that we ate a lunch; he brought us a lunch and some cider, and then when we came down to Thiede's we were setting our trees and discussing how we would set them. After we set out a part of them we went in and had supper.
Q. I will ask you if any unpleasantness or and trouble of a domestic nature occurred between Thiede and his wife there at that time?
A. No, sir; I heard nothing of it.
Q. I want to ask you if during any of your visits there or when you were working there when Thiede and his wife were there about the premises, state whether or not you have ever seen them engaged in any quarrel or dispute.
A. No, sir; I cannot say that I ever saw anything unpleasant when I was around.
Q. You have seen Mrs. Thiede more than once around there, haven't you?
A. Yes, sir.
Q. How often have you, about?
A. I couldn't tell; I lived close to the brewery there for pretty near two years, and I used to go past to Murray and probably I would see her a good many times; I couldn't tell anywhere near the number of times; she is generally out and around.
Q. I will ask you if you ever saw her with her face bruised or eyes blacked?
A. I saw her once when she had a scar or bruise on her face.
Q. Do you remember how long ago that was?
A. It must be one year and a half ago, somewhere in that neighborhood.
457 Q. Whereabouts on her face was it?
A. Right here.
Q. On the cheek bone?
A. Yes, sir.
Q. Do you know of your own knowledge how she got that?
A. No, sir; I don't.

Q. Did you ever hear Thiede call his wife any epithets or bad names?

A. No, sir; I didn't.

Q. I will ask you if you have any recollection now of seeing Mr. Thiede sometime the first part of April last?

A. I presume I did.

Q. Last March or the fore part of April, somewhere along there?

A. Somewhere near that time.

Q. Tell me if you remember where you saw him.

A. I don't know that I can say where I saw him; I always see him around his place of business there.

Q. Do you remember seeing him last April? I will ask you if you have ever been engaged in assisting any neighbors in butchering hogs or killing animals, anything of that kind?

A. Yes, sir.

Q. Do you remember doing any work of that kind in the neighborhood last spring?

A. Yes, sir.

Q. I will ask you if you remember any particular occasion of taking any part of the slaughtered animal to Thiede's place; and if so, when and where was it?

A. Somewhere near the first of April I helped Mr. Beattie; by the way, he only had one animal, and I helped him butcher some chickens, and I hauled those chickens to the city for him, two or three loads—that is, two or three dozen at a time; and along about that time we butchered a couple of pigs, and he brought one of them in——

458 Q. Who?

A. Beattie and I butchered a couple of pigs and we brought one of them in the city here. Mr. Beattie gave me part of this liver from this butchering and I went by the brewery and I think I met Thiede in the road, he had just stepped out of the saloon, and he asked me what I had, and I told him I had a piece of liver Beattie gave me and I asked him to take a piece of it.

Judge HOWAT. Is this material?

The COURT. There is a great deal of it that is not material, but there was no objection to it.

Q. Proceed?

A. Thiede cut off a piece of this liver and I went into the brewery, probably was there half an hour or such matter and went home. I don't know what Thiede done with it.

Q. Did Thiede go into the brewery with you?

A. I can't remember whether he did or not.

Q. Was it a fresh-slaughtered animal?

A. Yes, sir; we had just killed it in the evening; we had just got through butchering.

Q. You were carrying it in your hand?

A. It was in a piece of paper.

Q. Who cut the liver off the piece?

A. Mr. Thiede cut it himself, I presume; I handed him the paper.

Q. You didn't cut it off?

A. No, sir.

Cross-examination by Judge HOWAT:

Q. You are a married man?

A. Yes, sir.

Q. Have been during all the time you speak of having worked for Thiede?

A. Yes, sir.

459 Q. You didn't board with Thiede's folks?

A. When I worked for Thiede I nearly always took my dinner there.

Q. Where did you eat it?

A. I always went to the house.

Q. How many times did you eat there altogether to the best of your recollection?

A. I presume I have eaten there 20 or 30 times, possibly.

Q. In how many years?

A. In the neighborhood of five years.

Q Four, five, or six times a year on an average?

A. Yes, sir.

Q. When you were working there two years ago, Stryker was there, was he?

A. Yes, sir.

Q. He took all his meals with Thiede's?

A. I don't know.

Q. And stopped there at night, didn't he?

A. I think he did; but I couldn't say as to that, I am sure.

Q. When evening came you quit work and went home and got your supper and stayed there?

A. Hardly ever.

Q. Hardly ever around the saloon at night were you after you were through your work?

A. Not very often.

Q. These two years you lived near Thiede's brewery, how close did you live?

A. About half a mile or three-quarters from Brother Snow's place.

Q. Where you were living?

A. For pretty near two years.

Q. You spoke of having lived for two years near Thiede's saloon?

A. Yes, sir.

Q. That place was half a mile from the saloon?

A. About half a mile.

Q. About a year and a half ago you say you saw a bruise on her cheek bone?

A. Yes; as near as I can remember.

460 Q. How much liver did Thiede cut off? How much would it weigh, in your judgment?

A. The piece of liver was wrapped up and I had taken it home, and I don't know that I ever saw it any more till it come on the table.

Q. How much weight did you have with you; about a pound or two?

A. I presume so.

Q. Did he take half of it?

A. I think so.

Q. So that he might have taken from half a pound to a pound; is that it?

A. I think more than that; I don't know just what a common hog liver would weigh.

Q. Did you take it all?

A. I had one liver and he took a part of it, I don't know how much.

Five minutes intermission at this point.

461 RICHARD ELROY, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?

A. Richard Elroy.

Q. Were you subpœn'ed here by the people?

The COURT. That is not material.

Q. Where do you live?

A. Murray.

Q. How long have you lived there?

A. About ten years.

Q. Are you acquainted with Charles Thiede?

A. Yes, sir.

Q. Were you acquainted with his wife in her lifetime?

A. Yes.

Q. How long have you known them?

A. Six years.

Q. Have you known them during the time they lived at Thiede's place near Murray?

A. Yes, sir; that is the only time I did know them.

Q. I will ask you how intimate your relations were with the family of Mr. Thiede during the five or six years you have known him?

A. They were friendly up to about one and a half years ago, before this thing occurred; not quite one and a half years, something over a year. He has always been friendly. I just simply stopped away from there and swore off taking a glass of beer.

Q. During the six years you knew them your relations were friendly, were they, all the time?

A. Yes, sir.

Q. I will ask you if during that time you were a frequenter of his place of business to any extent?

A. Well, two or three times a week, probably.

Q. Up to what time, about?

A. From a year to a year and a half before this thing happened.

462 Q. Before the 30th of April?

A. Yes, sir.

Q. Up to one and one-half years before that?

A. It was over a year.

Q. Then your visits there were not so frequent?

A. No, sir.

Q. Did you ever go over there to their place of business during that year and a half?

A. No, sir.

Q. During that year and a half I will ask you if you met Mrs. Thiede anywhere or saw her anywhere besides over at her place?

A. I don't know that I did.

Q. Don't remember seeing her during that year and a half?

A. No, sir.

Q. Or talking to her?

A. I spoke to her, I think, three days before the thing occurred?

Q. Before she was killed?

A. Yes, sir.

Q. Where?

A. She was standing near the garden and Charley was there and Lauenberger was there. I passed by and spoke to Mrs. Thiede and also to Charley.

Q. Did you stop and chat with them any?

A. No, sir; just passed the time.

Q. Just kept going right by?

A. Yes, sir.

Q. I will ask you if during the time prior to the period you have mentioned, which is you say a year or a year and a half before the homocide, during that time did you see Mrs. Thiede frequently or otherwise?

A. No, sir; I have not.

Q. Didn't see her then before that?

A. Yes, frequently I have before that, before that year and a half.

Q. From the time of your first acquaintance?

A. Yes, sir.

463 Q. State about how often that was?

A. Four or five years.

Q. About how often do you think you would see Mrs. Thiede during that time?

A. Once or twice a week.

Q. During that time state whether or not you would see her frequently with Thiede, the defendant here.

A. Yes, sir; I have met both of them in their place of business frequently.

Q. Sometimes you would find her there in the place of business?

A. Yes, sir.

Q. What was the place of business?

A. Saloon business.

Q. During that time did you ever notice Mrs. Th iede with bruises or scars on her face or person or with a black eye?

A. I never did.

Q. Did you ever hear the defendant, Charles Thiede, u se any abusive language toward his wife in your presence?

A. Not in the English language I never did; German I don't understand.

Q. Did you ever hear them in a quarrel or anything of that kind?

A. No, sir.

Q. You never saw him strike her?

A. No, sir.

Q. You say you were a visitor during that period about two or three times a week?

A. Yes, sir.

Cross-examination by Judge HOWAT:

Q. You said you had sworn off drinking; did you drink to excess before that?

A. No, sir.

Q. For the last year and a half, as I understand you, you have never seen her but once that you know of?

A. I have seen her, but not to speak to her.

Q. Not to be close to her?

A. No, sir.

464 Q. That was three days before she was killed?

A. I think the Thursday before the homocide happened.

Q. And you simply passed on the street and saw them in the yard and said, How do you do, and passed on?

A. Yes, sir; no conversation whatever.

Q. Prior to that time you were there about three times a week? Was Mrs. Thiede always in the saloon?

A. No, sir.

Q. How often would you see her, then?

A. Probably once or twice a week when I would be in there.

Q. Do you think she was there as often as that?

A. Put it once.

Q. Have you any recollection about it at all; did you just see her occasionally?

A. That is all.

Q. Were you ever in the house?

A. Only once.

Q. So that you don't know anything about the condition of her eyes and face when she was not in the saloon?

A. No, sir.

Q. Where you saw her was in the saloon?

A. Yes, sir.

Q. And you saw her there occasionally.

Redirect examination by Judge CHERRY:

Q. When were you in the house?

A. I think one Sunday evening.

Q. About how long before the homocide?

A. I can not say. It might have been a year or two years.

Q. Was it a brack or frame house?

A. Brick house.

Q. How long were you there on that occasion?

A. Only a few minutes.

Q. Was it at meal time?

A. No, sir; after meal time.

Q. Was Mrs. Thiede present?

A. Yes, sir.

465 Q. Did you see any bruises or marks about her face at that time?

A. No, sir.

Q. How near did you live to Thiede's place, or did you at that time?

A. About 200 yards.

Q. Been living that near all the time during your acquaintance?

A. Yes, sir.

Q. Which direction?
A. North.
Q. What road?
A. The country road.

Cross-examination:

Q. Ever hear Mrs. Thiede scream?
A. No, sir; I couldn't say that.
Q. Why can't you say whether you heard her scream or not?
A. Because I couldn't recognize the voice whether it came from her or some one else.
Q. Where did the scream come from?
A. I couldn't say that either.
(Objection as not cross-examination.)
(Objection sustained.)

466 ANDREW SJOBLOM, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. Where do you live?
A. 130–2 Qest First South st., Salt Lake City.
Q. What is your business?
A. Running a grocery store.
Q. How long have you lived here?
A. I think it is five years this October.
Q. Are you acquainted with the defendant, Charles Thiede?
A. Yes, sir.
Q. Were you acquainted with his wife in her lifetime?
A. Yes, sir.
Q. About how long have you known them?
A. I couldn't tell exactly the date, but I started to do business with the people down there in September, 1893, and my books will show——
Q. What kind of business do you conduct with the people of Murray?
A. Selling groceries.
Q. Did you have a store there?
A. No, sir; I delivered from my store in the city.
Q. Took the goods down there?
A. Yes, sir; and solicited at the same time I took the goods.
Q. Take orders?
A. Yes, sir; I delivered one day and took orders for the next day I came out. I didn't come every day; sometimes twice a week, sometimes once a week.
Q. Is that the time you got acquainted with Thiede and wife?
A. No, sir; that was later, but the date I couldn't say.
Q. Can you tell about when that was?
A. I should judge about a month or so later from the time I first started to go down there.
467 Q. Sometime in October?
A. I presume so.
Q. What year?
A. 1893.
Q. Did you drive the wagon yourself, or through a clerk?

A. Drove it myself until, I think, the first part of February or the last part of January; this year I put my man to work on the wagon. From that on we worked off and on—he would go a few days, and then we would change and I would run a few days.

Q. After that time?

A. After the last of January or the first of February.

Q. Did you take orders and deliver groceries to the Thiede family up to the time the homocide was committed?

A. Yes, sir.

Q. You were still doing business for them up to that time?

A. Yes, sir.

Q. From the time you commenced?

A. Yes, sir.

Q. Now, you may state to the jury how often during the week you visited the Thiede place and took orders or delivered goods.

A. It would be impossible for me to state just how many times I was there. Most of the time I was only there once a week; I divided the district out there.

Q. About how often per week?

A. I didn't always stop once a week.

Q. Was there any of that time you were there oftener than once a week?

A. Yes, sir.

Q. State with whom you did business when you went there.

A. With Mr. and Mrs. Thiede both, sometimes with Thiede, mostly so, and with Mrs. Thiede sometimes.

Q. State what time in the day you usually visited their place.

468 A. Between noon and four o'clock in the afternoon.

Q. At any of your visits there did you ever see Mr. and Mrs. Thiede together?

A. Yes, sir.

Q. Where?

A. At the house and saloon.

Q. State if you ever heard any disputes or quarreling between them while you were there at any of your visits.

A. I couldn't say that I did.

Q. Did you.

A. I couldn't say that I did.

Q. I will ask you if you remember the last time you were there and took an order for groceries?

A. The last time I was there was the day before the murder was done.

Q. On Monday?

A. Monday.

Q. Who did you do business with that day?

A. They were both together at the saloon.

Q. Who was it gave the order?

A. At that date it was Mr. Thiede gave me the order for some Hamburger rolls. That is what he was wanting for his saloon, so of course he gave the order for it.

Q. Did she give any order?

A. No, sir.

Q. Was that all the order given then?
A. Yes, sir.
Q. Do you remember the nature of the orders that had been delivered there at the times you have mentioned?
A. A general line of groceries, I can't tell exactly unless I went to the books for it.
Q. Didn't you deliver some groceries Monday?
A. Yes, sir.
Q. That was from a former order, was it?
A. Yes, sir.
Q. What did that consist of?
A. I couldn't say unless I looked at my books.
469 Q. You can determine, can you, by looking at your books?
A. Yes, sir.
Q. Will you do that as soon as you get off?
Judge HOWAT. Is it material?
Judge CHERRY. It is.
Q. Do you remember who gave the order just before the last order of these groceries?
A. I don't.
Q. You don't remember whether he or she?
A. I don't.

Cross-examination by Judge HOWAT:

Q. Your only relations with Thiede and wife were simply selling groceries?
A. That is all.
Q. And deliver the goods?
A. Yes, sir.
Q. And you spent just as little time as possible with them, so as to get to the next customer?
A. Certainly.
Q. You didn't concern yourself with their domestic affairs one particle?
A. No, sir.
Q. And wasn't looking for any disturbance and didn't interest yourself at all in regard to their matters?
A. Not at all.
Q. When you drove up to take orders where did you go, to the saloon or the house?
A. I generally stopped at the saloon.
Q. Weren't there a great many times you went to take orders for groceries and didn't see Mrs. Thiede at all?
A. Yes, sir.
Q. About how many times did you see Mr. and Mrs. Thiede together during that time?
A. I couldn't say.
Q. Half a dozen times?
A. I couldn't say.
Q. How many times did you ever see Mrs. Thiede?
A. It would be impossible for me to say.

470 Q. Do you think you saw her ten times altogether?
A. Yes, sir.
Q. But there were times, you say, when Thiede gave the order and you never saw her at all?
A. Yes, sir.

471 Mrs. LOUISA PEARSON recalled by Judge Howat for further cross-examination:

Q. How old are you?
A. 30.
Q. When were you married to Mr. Pearson?
A. Five years ago.
Q. Where were you married?
A. Sandy—excuse me, I was married in Salt Lake.
Q. Can you give me the date?
A. The first of March.
Q. What year?
A. It is five years the first of March.
Q. Five years next March?
A. Next March.
Q. What was your name at that time?
A. Louisa Thiede.
Q. You were born in Germany?
A. Yes, sir.

472 FRANZ MODEL, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. Franz Model.
Q. How do you spell your last name?
A. M-o-d-e-l.
Q. Where do you live?
A. Hustler's mill, on State road, about four miles south from town.
Q. Between this place and Murray?
A. Yes, sir.
Q. How long have you lived there?
A. About three years.
Q. Are you acquainted with the defendant, Charles Thiede?
A. Yes, sir.
Q. Were you acquainted with Mary Thiede in her life time?
A. Yes, sir.
Q. How long have you known Charles Thiede?
A. Six or seven years.
Q. How long have you known Mrs. Thiede before her death?
A. I guess about five years.
Q. Were you ever at their place of business?
A. Several times I have been there.
Q. Were you ever at the house?
A. A minute or two, sometimes.
Q. The brick house?

A. Yes, sir.
Q. On what particular occasions?
A. I go by there sometimes and call in and get a glass or two of beer.
Q. Did you ever drive down there with anyone?
A. Yes; with my wife; nobody else.
Q. Did you ever see Mr. and Mrs. Thiede together?
A. Yes, sir.
Q. Where?
A. At the saloon.
Q. Anywhere else?
A. No, sir.
473 Q. Were you ever in the house?
A. Several times.
Q. Did you see them there then?
A. He went in to get a cup of coffee and then came back out.
Q. Who went in?
A. Thiede.
Q. Did you get any coffee on that occasion?
A. No, sir.
Q. Did your wife get a cup of coffee?
A. I think she did.

Q. Can you give any idea about how frequently you saw Mrs. Thiede around, either at the house or saloon or around the premises there when you were there, or when you passed there? Have you any idea how often you have seen her?

A. It has been quite often; I can't tell how often. Sometimes I saw her once a week, and sometimes I wouldn't see her for six months, other times six weeks, sometimes a month; sometimes I would go down there over Sunday.

Q. Do you remember how long it was before the homocide that you saw her.

A. I guess within a month or two. It had just been two months.

Q. State if at any of your visits there, at any of the times you were passing or were down there, if you ever heard them engaged in a quarrel or dispute?

A. No, sir.
Q. Never did?
A. No, sir.

Q. Did you ever see Mrs. Thiede when she had her face bruised or wounded?

A. No, sir.

Q. Before you were at Hustler's mill where did you live with reference to Thiede's place?

A. I lived at Sandy Roll mill, by Lem Cooper's.

Q. Were your visits any more frequent at that time than when you came to Hustler's mill?

474 A. I didn't come there often then; sometimes not for months.
Q. You visited oftener after you came to Hustler's mill then?

A. Yes; in the summer time than in the winter. In winter I didn't come very often.

Cross-examination:

Q. How many times did you see her for the last six months before she was killed?

A. Two or three times.

Q. You simply went down there to get a glass of beer, that is all?

A. That is all.

475 S. A. AHLBERG, a witness sworn by the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?

A. S. A. Ahlberg.

Q. Where do you live?

A. Murray.

Q. What is your business?

A. I am a clerk in Harry Haynes' store.

Q. How long have you been engaged in that business?

A. Between four and five years.

Q. Are you acquainted with Charles Thiede?

A. Yes, sir.

Q. How long have you known him?

A. About the last four or five years.

Q. While you lived at Murray?

A. Yes, sir.

Q. Did you know Mrs. Thiede?

A. Yes, sir.

Q. In her lifetime?

A. Yes, sir.

Q. How long had you known her?

A. I can't tell exactly if I knew her so long as Mr. Thiede, but about three years.

Q. You know where the Thiede place is, do you?

A. Yes, sir.

Q. Were you ever over at their place of business during the time that you were acquainted with her; go over there, or have any business over there; go over often or otherwise?

A. Several times when I was out on business I called in, and I done some business with Mr. Thiede and Mrs. Thiede—both of them. I was delivering goods; I took orders there, and delivered goods back again, just the same as other places.

Q. Did you ever see Mrs. Thiede in the store where you clerked?

A. Yes, sir.

476 Q. How frequently would *you* come to your store?

A. She would not come very often.

Q. About how often would you say?

A. Sometimes it would be several months between.

Q. When you would go over there to transact business; would you see her?

A. Sometimes.

Q. Did you take orders for groceries or goods or, go over to deliver goods?

A. Sometimes I took orders and sometimes I delivered goods.

Q. Did you ever transact that class of business with Mrs. Thiede?

A. If Mr. Thiede was not at home, and whoever I got first I asked if there was anything I could sell them, the same as other people.

Q. During the times you were over there, did you ever see them when they would both be together?

A. Many times.

Q. I will ask you if you ever saw them in any quarrel or any dispute of any kind while you were there.

A. No, sir.

Q. Did you ever see Mrs. Thiede when she had her face bruised or eyes blacked?

A. No, sir.

Q. I will ask you if you ever, on any occasion, saw Mrs. Thiede receive a fall.

A. One night, just as it was getting dark, I drove past the place and I called in and the little girl was screaming loud, and she said, Come in——

Q. Never mind that; state what she did.

A. I asked, What is the matter——

Q. Don't tell their reply.

A. I looked through the door and Mrs. Thiede stood on the middle of the saloon, and I went out again and the girl called me to stay, but
477 I went out again, and as I turned I heard a fall in the saloon, and turned back and looked in the door and Mrs. Thiede was lying on the floor like she had fallen down, and I had my horse outside and a man come, and I told him——

Q. Tell what you did.

A. I jumped on the wagon and started for home again.

Q. Did you go in the saloon?

A. No, sir; just in the door.

Q. You say you first saw her standing?

A. In the middle of the floor.

Q. On the floor?

A. Yes, sir.

Q. When you looked you heard a noise, and you looked and she was lying on the floor?

A. Yes, sir.

Q. How was she lying on the floor; what way?

A. Her feet were toward the front door; the front door was closed at the time and the west door was open; it was from there I come in. I talked to the girl——

Q. Tell the jury how close, if you noticed, her head and face were to the floor of the saloon.

A. She just raised her head up when I looked into the door; her body was on the floor; she just raised her head and asked, What is the matter——

Q. Could you tell from her appearance what was the matter with her?

A. No, sir.

Q. Couldn't tell whether it was a faint or she had been drinking or sick?

A. No, sir.

Q. Did you have any opinion as to what was the matter with her at that time?

Judge HOWAT. He can not call for an opinion.

478 Q. State whether it is a fact she was intoxicated at that time.

A. I couldn't say; I didn't talk with her.

Q. But from her appearance, could you see?

A. There was no time; I had to watch my horse outside.

Q. You say you called another man's attention to it?

A. Yes.

Q. Who was that man?

A. A man that lived close by.

Q. What is his name?

A. Nold Christ.

Q. Where does he live now?

A. At Murray.

Q. Have you seen him lately?

A. A few days ago.

Q. Did you see Thiede there at that time?

A. No, sir.

Q. Did you hear of Mrs. Thiede being killed?

A. Yes; in the morning when it happened.

Q. You knew about the time it happened?

A. Yes, sir.

Q. I will ask you whether or not you went over there.

A. Yes, sir; went down at the same time as Sheriff McQueen came out.

Q. How did you go?

A. In a buggy with Deputy Sheriff Cahoon.

Q. Did he and you go in a buggy?

A. Yes, sir.

Q. What time did you go there with reference to when the sheriff got there?

A. At the same time.

Q. State to the jury where you hitched your team, if you remember.

A. Well, I couldn't say; Mr. Cahoon drove the horse and I rode with him.

Q. Did you get out of the buggy when you got there and go right into any of those buildings there?

A. Yes, sir.

Q. State where you went when you got down there.

A. We walked into the saloon where Mrs. Thiede was lying on the pool table.

479 Q. Which door did you go into the saloon by?

A. The west door, the main door, the front door.

Q. Indicate on the map.

(Witness indicates the south door.)

Q. When you first went into that saloon, where was Thiede standing?

A. (Witness indicates.) There were some beer kegs, and Thiede and McQueen were in the middle, about here.

Q. Did you hear any conversation between the sheriff and Mr. Thiede?

A. Yes, sir; Sheriff McQueen put Mr. Thiede under arrest and said, you are arrested.

Q. Were you there when McQueen came into the room?

A. I can't say if he was in before me or not.

Q. Did you hear McQueen say anything to defendant, Thiede? What is the first thing you heard him say?

A. He told him to sit down on a beer keg and be quiet, and don't say anything.

Q. Is that the first thing he said?

A. As far as I can recollect.

Q. Did you hear what Thiede said?

A. He said, I called you to come out here to keep peace, and not to arrest me.

Q. Did you hear Thiede say, I killed my wife last night?

A. No, sir.

Q. I will ask you, did you hear McQueen say, when he came in there, What is the matter here, Charley, or words to that effect?

The COURT. Let him state what he heard.

Q. When you entered was McQueen already in the saloon, or did he come in as you came in, do you remember?

A. I don't remember; I couldn't say.

Q. Did you see Montgomery there?

A. Yes, sir; he and McQueen were together.

480 Q. Did you see them come into the saloon, either one of them?

A. Whether they were both in before I was I couldn't say.

Q. I will ask you what you heard McQueen say to the defendant.

A. McQueen went outside, and all went outside, and McQueen walked around to the spot where Mrs. Thiede had been killed, and coming back took Thiede and placed his hand on his arm, and throwed him on the ground and said, You dam' son-of-a-bitch, you killed your wife, and you know it, and if you don't testify I will kill you.

Q. Is testify the word, or confess?

A. Confess.

Q. Please state that again with the right word, so that the jury can hear it. What is your nationality?

A. I am a Swede. Confess, it should be.

Q. State to the jury what else McQueen did to the defendant, if anything, at that time.

A. He hit him on his cheek with his hand.

Q. State if you saw him kick him.

A. No, sir.

Q. State whether the defendant's hands and arms were tied at this time.

A. No, sir.

Q. Are you certain?

A. Yes, sir.

Q. After that?

A. After that he went for a rope to tie him with, and I left him.

Q. And you went away?

A. Yes; that is the last I was down there.

Q. I will ask you if you remember how you got your information Mrs. Thiede was dead; how you first heard it.

A. He come up and called doctor, and doctor come and called me; Mr.

Thiede was in company with Dr. Farrabee and this old Lauenberger, I think is his name.

481 Q. Do you know what time it was you were called?

A. I can't tell exactly the exact time.

Q. Where were you when you were called?

A. In the store; I sleep in the store.

Q. How were you awakened?

A. Doctor called me and asked me if I was in.

Q. Did he just stand outside and call you from the street?

A. Yes, sir.

Q. Didn't he rap on the door?

A. On the window and asked, Ahlberg, are you in? And I answered, Yes, I was in; and he told me what was up, and I opened the door and so come to go there.

Q. What did you do towards dressing yourself before you opened the door—anything?

A. I opened the door as quick as I could.

Q. Did you put on any clothing before you went to the door?

A. I had no time.

Q. You just got out of bed and went to the door?

A. Yes, sir.

Q. Did they come in the room—any of them?

A. Mr. Thiede came in.

Q. Did Dr. Farrabee come in?

A. He never come in.

Q. He stood in the door?

A. He stood in the door.

Q. Did you have any conversation with the defendant at that time?

A. I asked him how it happened. When he was ready to leave he wanted to telephone to his folks in Sandy.

Q. Did you have any conversation?

A. Yes, sir

Q. What was the object of his visit there? Did he say?

(Objection, as incompetent.)

482 Judge CHERRY. They were made in the presence of Dr. Farrabee and have been introduced in evidence by The People.

Judge BARTCH. About the telephoning?

A. Yes, sir.

Judge HOWAT. I never asked him a word about it.

The COURT. I think as to what he said it would not be competent.

(Exception.)

Q. Did I understand that Mr. Thiede's visit to your place was after the woman had been killed?

A. Yes, sir.

Q. You were so informed that the homocide had occurred at that time?

A. Yes, sir.

Q. I will ask you what you did in reference to telephoning to any person, or attempting to, about the homocide?

(Objection, as incompetent and immaterial.)

Judge CHERRY. That is part of the res gestæ.

The COURT. The question in my mind was as to whether this particular matter was brought out by the prosecution or the defense. If it was brought out on the cross-examination it is incompetent.

(Objection sustained. Exception.)

Q. State now what, if anything, the defendant, Charles Thiede, said to you in the presence of Dr. Farrabee and Mr. Lauenberger in reference to the homocide or in reference to the death of his wife.

(Objection, as incompetent and immaterial.)

(Objection sustained. Exception.)

Q. I will ask you, after Dr. Farrabee and the old man Lauenberger went away, to state whether you had any conversation with the defendant in the store?

A. Yes; I asked him——

483 Q. I am asking you if you had such a conversation?

A. Yes, sir; a few words said.

Q. State to the jury what that conversation was.

(Objection as incompetent.)

(Objection sustained. Exception.)

Q. State if you made a light when those parties called for you.

A. Yes, sir.

Q. Did Mr. Thiede come into the store?

A. Yes, sir.

Q. How long did you remain there?

A. Two or three minutes.

Q. During the time he was there you may state how he acted with refence to whether he was laboring under excitement or not.

A. He was very excited.

Q. If, while Mr. Thiede was in your office in that store on the occasion you have just testified about, I will ask you if he didn't request you to telephone the death of his wife to his relatives at Sandy?

A. Yes, sir.

Q. Don't answer until the attorney has a chance to object.

Q. I will ask you whether or not he didn't ask you and request you to telephone the fact of his wife having been murdered to the sheriff of this county?

A. There was something said about it, in the excitement he went out and——

Q. Did he say anything about telephoning?

A. Yes, sir; he said he would like to telephone the sheriff, but there was no telephoning done.

Q. You didn't do any?

A. No, sir.

Cross-examination by Judge HOWAT:

Q. Did you telephone to Sandy?

A. Yes, sir.

Q. For his brother-in-law, both of them?

A. We got no answer from Sandy; nobody answered.

484 Q. Why didn't you telephone for the sheriff if Thiede wanted you to do it?

A. He went out and didn't tell me to do it. He talked about it; he would like it, and he went out and there was nothing done.

Q. Did he tell you to telephone for the sheriff?
A. No, sir.
Q. He didn't telephone by himself to your knowledge, did he?
A. No, sir.
Q. What did he say about telephoning for the sheriff?
A. He said he would like to telephone for the sheriff, that is all; nothing more was said.
Q. He told you to telephone to Sandy?
A. Yes, sir.
Q. But he didn't tell you to telephone for the sheriff?
A. No, sir.
Q. When you went into the saloon that morning after Mrs. Thiede was dead, did you see Thiede behind the bar at all?
A. No, sir.
Q. Did you see him pass from behind the bar down here into the body of the saloon?
A. He was here when I came in.
Q. He was out in the saloon part when you came in?
A. Yes, sir.
Q. And the first thing you heard McQueen say was that he was under arrest, and to sit down on that keg?
A. Yes, sir.
Q. And he said, That's a nice thing to do; I sent for you to keep the peace, and now you arrest me?
A. Something of that sort.
Q. You don't pretend to say you saw McQueen or Montgomery come into that door at all, or any door?
A. Not to my recollection; no, sir.
Q. And you stood about here?
A. Yes, sir.
485 Q. You have told us about what McQueen said and done with that man outside?
A. Yes, sir.
Q. What was Thiede saying to him?
A. He said, I don't want you to hit me; you should not do that.
Q. What did he say before that? Wasn't he saying, This is my wife; you have no business to come here and arrest me?
A. I didn't hear that.
Q. Will you say he didn't say that to the sheriff?
A. I can not say that.
Q. You can not say Thiede didn't say that to the sheriff?
A. No, sir.
Q. Do you know whether Thiede resisted the sheriff putting him under arrest outside, and said he would not be arrested?
A. No, sir; he didn't; it was in the saloon there was a little struggle. He would not sit down right away, but outside he did.
Q. There was a little struggle in the saloon?
A. Not much.
Q. What was the trouble?
A. He didn't want to sit down right away.
Q. What did he say?

A. He said, I don't want to sit down; I want you to come here and keep peace and not to arrest me.

Q. He got up?

A. He sat down and got up.

Q. Didn't he propose to come out?

A. They all went out and he went out, too.

Q. Didn't he say the sheriff couldn't put him under arrest; it was his wife lying dead, and it was nobody's business?

A. I can not recollect that.

Q. Did you go out when they went out?

A. Yes, sir.

486 Q. Were you out all the time they were out?

A. Till I left the place. I didn't come in any more after that.

Q. How close were you to McQueen and Thiede?

A. Well, I was close to the door, and this was between the door and brewery.

Q. When he put him on the ground, as you say, and said, You son of a bitch, you killed your wife, etc., where were you at that time?

A. About as far from the end of the table over there.

Q. What was Thiede doing?

A. I don't know.

Q. Do you know what he was saying to McQueen?

A. He said, You hit me, Bill; I don't want you to hit me again.

Q. Do you know why he hit him?

A. No, sir.

Q. You say you were there when you saw Mrs. Thiede fall down; how long ago was that?

A. I can't tell exactly.

Q. Tell us about as near as you can recollect.

A. Last winter sometime.

Q. How did you happen to be there?

A. I drove past the place.

Q. Were you in the saloon at all?

A. I was in the door.

Q. I mean before you looked in and saw her falling down. Were you in before that time?

A. No, sir; I was not; there was nobody in the door.

Q. You looked in?

A. Yes, sir. The girl was in, and Mrs. Thiede was in.

Q. What was Mrs. Thiede doing then?

A. She stood in her underclothes in the middle of the hall there.

Q. Did you speak to her?

A. Yes; but there was no answer.

Q. Do you know where Thiede was?

A. No, sir.

487 Q. He might have been outside of the saloon for anything you know?

A. I don't know.

Q. Don't you know anything about it?

A. No, sir.

Q. Do you mean to say she was drunk at that time?

A. I don't know.
Q. Did you ever see her drunk?
A. No, sir.
Q. I understand that you went there and sold goods?
A. Yes, sir.
Q. And delivered goods?
A. Yes, sir.
Q. Is it a fact that most of the times Thiede gave the orders?
A. Yes, sir.
Q. And you didn't see Mrs. Thiede at all?
A. Yes, sir.
Q. That is true, is it?
A. Yes, sir.

Redirect examination:

Q. You say there were times you took orders for goods you didn't see Mrs. Thiede at all, but there were times you did see her?
A. Yes, sir.
Q. I will ask you how you came to look into the saloon the time you saw Mrs. Thiede there? Where was the little girl when she screamed?
A. Behind the bar.
Q. You heard it inside?
A. The door was open.
Q. Where were you at the time?
A. In the door right here.
Q. Had you heard the screams before you went to the door?
A. I heard it when I left the wagon, and I thought I would see what it was, and there was the girl screaming.
Q. What first attracted your attention to come to the saloon?
A. That is the place I used to call.
Q. You were on one of your business trips?
A. Yes, sir.
Q. You didn't do any business with Mrs. Thiede that day?
A. No, sir.

488 F. H. BEATTIE, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. Fulton H. Beattie.
Q. Where do you live?
A. I live just west of the Germania smelter down to Murray.
Q. Do you know the defendant, Charles Thiede?
A. I know the gentleman there; he used to be called Charles Thiede.
Q. Did you know his wife, Mrs. Thiede, in her lifetime?
A. Yes.
Q. How far did you live from where their place of business was, known as the Thiede saloon and brewery?
A. One-half or three-quarters of a mile.
Q. How long have you lived there?
A. Three or four years this fall.
Q. How long have you known Thiede and his wife?

A. I have known them casually since I moved onto the ranch there.

Q. I will ask you if you have seen Mr. and Mrs. Thiede during that time frequently or otherwise?

A. I should think during the last year I have seen her on an average of once in three or four weeks; possibly sometimes I would see her maybe once or twice a week, and other times not for a month or two or three.

Q. Did you ever see them together around the premises?

A. A few times.

Q. I will ask you whether you ever heard any quarrel or dispute between him and his wife while you were there?

A. I did not.

489 Q. I will ask you if you ever saw any bruises or black eyes on Mrs. Thiede's face while your were there?

A. Not that I have noticed.

Cross-examination by Judge HOWAT:

Q. Did she ever visit your place?

A. I think she did visit my wife maybe once or twice.

Q. Did you ever have a conversation with her?

A. Yes, sir.

Q. What was her business with you at that time?

A. At the time I had the conversation.

Q. Where was that you had the conversation?

A. In her own home.

Q. How did you come to be there?

A. I had bought my ice of Mr. Thiede, and sometime or other when it was delivered I didn't pay for it, but told him I would come in a day or two and settle for it, and when I went there Thiede was not home, so I met her and paid her for the ice.

Q. Where did you see her at the time?

A. In her house.

Q. Dwelling house?

A. Yes, sir; she called me in.

Q. Have a conversation with her at that time?

A. Yes, sir.

Q. About the domestic matters between herself and husband?

A. Yes, sir.

Q. Who brought the subject up, she or you?

A. She did; Mr. Thiede was not at home.

Q. When was that?

A. Sometime in February.

Q. This present year?

A. Probably toward the latter part of February, the last ice was just going out.

(Objection as not cross-examination and incompetent, immaterial, and irrelevant.)

490 The COURT. He cannot state the conversation.

Judge CHERRY. Commencing with the question about domestic matters, I move that and the subsequent questions be stricken out as not cross-examination, immaterial, irrelevant, and incompetent.

The COURT. It may be stricken out.

Q. How long did you remain with her at that time when you were at her house?

A. I should think half an hour.

Q. What was you business there?

A. I went over to pay Mr. Thiede some money and he was not at home.

Q. How long did it take you to transact that business?

A. I paid her the money at once. I asked her if I could not pay her the money.

Q. Why did you remain so long?

A. We had a conversation, and I remained while she was talking to me.

Q. Were you ever close to her, and had any conversation with her excepting that one time?

A. Very often when I passed the road there, going to town or going home, she would be probably in the yard somewhere or in the street.

Q. Did you ever have any conversation with her, excepting this one time?

A. Very little, once in awhile I would speak with her, if I would meet her.

Q. In the last year, you saw her how often?

A. Three or four weeks, every three or four weeks on an average.

Q. In the last year you saw her a dozen or fifteen times, not over that?

A. I hardly think I saw her over that, so that I noticed her.

491 Q. How many times did you see the parties together, Mr. Thiede and wife, during the last three years?

A. Possibly, during the time I have been out there, half a dozen times.

Q. Under what circumstances; see them in the saloon or yard together?

A. I may have seen them once in a while in the saloon, not often, but outside in the lane like, or between the brewery and saloon down the road.

Q. Did you ever see them together any length of time or just as you were driving past?

A. Sometimes I would buy some poultry of Charles Thiede. When I was there to buy that Mrs. Thiede would come out, and they were there together and would talk about the poultry, or she would be there whether she said anything or not; that occurred once or twice.

Q. They didn't fight and quarrel while you were there?

A. They didn't fight or quarrel about it that I have seen.

Q. You said in the three years you were there you probably saw them together half a dozen times?

A. Yes, sir.

Q. When you were having a business transaction with Thiede?

A. Two or three times, and three or four times otherwise.

Q. What were these times when it was otherwise?

A. Once in a while I was in the saloon occasionally, and I think I have seen them together in the room at the same time.

Q. How long did you remain in the saloon?

A. Never very long in the saloon.

Q. About how long; just a minute or so?

A. Just a minute or so, unless I was on business with Mr. Thiede.

Q. Can you tell me any time you saw them together in the saloon where you remained longer than a minute or two?

A. A very short time at any rate.

492 Q. During that very short time you were there they didn't quarrel or fight?

A. No, sir; there was nothing said out of the way.

Redirect examination:

Q. On two occasions you were there to buy poultry and Mrs. Thiede was present?

A. Yes, sir.

Q. Did Mrs. Thiede participate in the conversation regarding the sale of the poultry?

A. I don't think Mrs. Thiede ever did. I don't remember, but I might see her around near where she might hear us talking.

Q. You don't know whether she ever said anything about the transaction to you or took any part in talking about it, do you?

A. I think not; I don't remember.

Cross-examination:

Q. She stood by and remained silent?

A. Yes, sir.

Q. Have you a recollection that she remained silent on those occasions?

A. That is my recollection.

Q. You don't remember of her saying anything? You cannot recall any language used?

A. No, sir; I cannot.

Q. It is your recollection she didn't use any?

A. That is my recollection. She might have heard our talk but didn't interfere or say anything.

Judge CHERRY. It is admitted that the witness, Andrew Sjoblom, had business transactions with the defendant and wife.

Judge HOWAT. I will not do that. I will admit he delivered those goods at that time.

The court *the court* gave the customary instructions to the jury and adjourned till 10.00 o'clock to-morrow morning.

493 THURSDAY MORNING, *October 18th*, 1894.

JOHN TRUSK, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?

A. John Trusk.

Q. Where do you live?

A. Murray.

Q. Where do you work?

A. At the Germania smelter.

Q. Do you know Charles Thiede?

A. Yes, sir.

Q. How long have you known him?

A. One year and three month'.

Q. Where were you on the night of April 30th last?

A. I cannot understand English.

Q. Where were you that night?

A. I cannot talk.
Q. Where did you go Monday night?
A. I was up to the U. P. saloon.
Q. You heard about Mrs. Thiede being killed?
A. I heard the day after.
Q. The night before that where were you?
A. I was up to the U. P. saloon.
Q. Who keeps that saloon?
A. Fred Carlson and Solomon Nelson.
Q. What time did you leave that saloon?
A. A quarter past 12.
Q. Where did you go?
A. Down to Charles Thiede's saloon.
Q. Where did you go?
A. I went down the track to Burgatown and then right straight to Charley's.
Q. Did you walk fast or slow?
A. I cannot say.
Q. You don't remember?
A. I cannot talk English.
Q. Was there a light in Charley's saloon?
A. There was a light in his saloon.
Q. Did you go into the saloon?
A. Yes, sir.
494 Q. What did you see there?
A. I didn't see anything there. I was hollering, Charley.
Q. Did he answer you?
A. No, sir.
Q. Then where did you go?
A. I went out of the door and hollered for him again.
Q. Called for him out there?
A. Yes, sir.
Q. Was there a light in the house?
A. Yes, sir.
Q. Down where he lived?
A. Yes, sir.
Q. Did you go down that way?
A. No, sir.
Q. Then what did you do?
A. I went in the saloon again and hollered for him, and I was looking behind the bar and he was laying there.
Q. Did you call him again?
A. Yes, sir.
Q. Did he answer you?
A. Yes; he come up.
Q. What did he say?
A. I said, Will you get me a drink? Yes, he said.
Q. What did you do?
A. He got me a drink.
Q. Did he get up?
A. Yes, sir.

Q. Did he go around behind the bar?
A. Yes, sir.
Q. What door did you come in?
A. [Witness indicates the side door on the map.]
Q. Where was Charley?
A. [Witness indicates behind the lunch counter.]
Q. What was he doing?
A. I don't know.
Q. Standing up?
A. He was laying on the couch.
Q. When he got up where did he go from there?
A. [Witness indicates behind the bar.]
Q. Anybody with you?
A. John Johnson.
495 Q. What did you buy of him?
A. I believe two beers. I don't remember, hardly; I think it was beer.
Q. How many?
A. Two glasses, one for me and one for my partner.
Q. You bought two glasses?
A. I think it was beer.
Q. Did you buy anything else?
A. Yes, sir; a bottle of whiskey, too.
Q. Which did you buy first, beer or whiskey?
A. Beer.
Q. You stood at the bar and drank that there?
A. Yes, sir.
Q. Did you pay him?
A. Yes, sir.
Q. Did you pay for the beer before you bought the whiskey?
A. Yes, sir.
Q. Then after you bought and drank the beer you bought the whiskey, is that what you mean?
A. Yes, sir.
Q. How much whiskey did you buy?
A. 50 c.
Q. Were there lights in the saloon? Was the saloon lighted up?
A. Yes, sir.
Q. Had you been drinking before that, before you got down there?
A. I had only three glasses of beer before.
Q. The whole evening?
A. Yes, sir.
Q. Did you see any blood on Charley Thiede's clothes?
A. No, sir.
Q. I will ask you the next morning if you saw the sheriff and Charles Thiede come to your place where you board?
A. No, sir; I was sleeping that morning. I didn't see them.
Q. You didn't talk to Charles Thiede in the morning and Sheriff McQueen?
A. No, sir.

496 Cross-examination by Judge HOWAT:

Q. When were you working in the Germania smelter before that evening? When did you quit work?

A. The day I started in?

Q. You started work that evening?

A. Yes, sir.

Q. What time did you go to the U. P. Saloon?

A. I don't know. I think it was about half past ten or between ten and eleven; I don't know what time.

Q. Where were you at 9 o'clock that evening, the rest of the time?

A. I can not understand.

Q. How was Mr. Thiede dressed that night when you went there?

A. He had a white shirt on; that is all I can remember.

Q. What kind of a vest did he have on?

A. I don't know.

Q. Didn't he have on a black vest?

A. I can't say that. I don't remember what vest he had on.

Q. Haven't you said before he had on a black vest?

A. No, sir.

Q. Had he any vest on?

A. I forget what clothes he had on.

Q. What were you doing that evening before you went to the U. P. Saloon?

A. Industrial army.

Q. How long did you stay at Thiede's saloon?

A. I believe it was ten or twenty minutes.

Q. What were you doing there that night?

A. Having a glass of beer and buying a bottle of whiskey.

Q. As soon as you got the whiskey didn't you go away?

A. I asked Charley if I could play a game of pool, and he said "No."

Q. You didn't play the pool?

A. No, sir.

Q. All you did was to buy a glass of beer apiece, get 50 c. worth of whiskey, asked Charley if you could play a game of pool, and he said "No," and you left then?

A. Yes, sir.

497 Q. What did you go down to Charley's saloon for that night at twelve o'clock, or fifteen minutes past twelve?

A. I went down for to have a glass of beer.

Q. Didn't they have beer at the U. P. saloon?

A. Yes, sir.

Q. Why didn't you drink the beer there?

A. I like to have one glass, and then I go home.

Q. Why didn't you drink your one glass before you left the U. P. saloon? They had beer at the U. P. saloon?

A. Yes, sir.

Q. And whiskey?

A. Yes, sir.

Q. You didn't need to go to Thiede's saloon to get whiskey or beer? Isn't it only about half a mile to Charles Thiede's saloon, or less than half a mile from the U. P. saloon?

A. I can not say how far away it is.
Q. It is only a short distance?
A. I don't know.
Q. Can you say whether Thiede was asleep there, or just pretending to be asleep?
A. I can not say whether he was sleeping or not, but I was in the saloon hollering for him, and I can not say.
Q. You didn't see him lying in there asleep?
A. No, sir; he didn't look like sleeping then.
Q. Did he look as if he had been awaked from a sleep?
A. No, sir.
Q. When you went there you say you went in this door?
A. Yes, sir.
Q. Was that door open when you went there?
A. Yes, sir; it was open.
Q. Was this door open, or did you notice?
A. I can not say; I don't know whether it was open or not.
Q. This was open?
A. Yes, sir.
498 Q. When you went there?
A. Yes, sir.
Q. You called for Charley?
A. Yes, sir.
Q. You didn't see anybody inside?
A. No, sir.
Q. You and John Trusk went outside?
A. Yes, sir.
Q. Where did you go?
A. Here.
Q. You stood there and called for Charley?
A. Yes, sir.
Q. How long did you stand out there and call Charley?
A. Three or four minutes.
Q. You don't know whether he came in this door while you were out there or not, and around in here?
A. No, sir.
Q. Don't know anything about that?
A. No, sir.
Q. When you went in again Charley was here?
A. Yes, sir.
Q. You didn't look over in there, did you?
A. Yes, I looked over that bar.
Q. What did you see?
A. Thiede; his face; that's all; I could see that of him; I knew he was laying down there.
Q. You don't know whether he was asleep or not?
A. No, sir.
Q. He got up and gave you this beer and whiskey?
A. Yes, sir.
Q. What were you buying whiskey for—to drink?
A. Yes, sir.

Q. Didn't you take whiskey that night at the U. P. saloon?
A. Yes, sir.
Q. Are you sure of that?
A. Yes, sir.
Q. You think you only drank three glasses of beer over there?
A. Yes, sir.
Q. Had you been working all the day before?
A. No, sir; I was sleeping the whole day.
Q. You were not working that night?
A. No, sir.
499 Q. How many lights were there in the saloon?
A. I believe there was one.
Q. Where was it?
A. Just in the center of the saloon.
Q. A hanging lamp from the ceiling?
A. Yes, sir.
Q. That was the only lamp you saw in the saloon?
A. Yes, sir; just a big lamp he has in the saloon.
Q. About the middle?
A. Yes, sir.

Redirect examination:

Q. Did you shake Charley by the arm?
A. No, sir.
Q. When you were outside, were you out so that you could see down to the house?
A. Yes, sir; we could just see down to the house.
Q. You stepped out so that you could see down to where the house was?
A. Yes, sir.
Q. Did you see a light down there?
A. Yes, sir.
Q. Was it a dark night?
A. Yes, sir.

Cross-examination:

Q. Did you kill Mrs. Thiede?
A. I did not.
(Judge Cherry asks that be stricken out.)
The COURT. That is not cross-examination and may be stricken out. There is no testimony to show just when the woman was killed.

500 JOHN JOHNSON, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. John Johnson.
Q. Where do you live?
A. Murray.
Q. Where do you work?
A. In the smelter.
Q. How long have you lived there?
A. Just about a year.

Q. Do you know Charles Thiede, the defendant?
A. Yes, sir.
Q. How long have you known him?
A. Just the same time.
Q. One year?
A. Yes, sir.
Q. Do you know about the time Mrs. Thiede was killed?
A. Yes.
Q. Do you remember where you were that night?
A. Yes, sir.
Q. Where were you?
A. I was there.
Q. Tell where you were before that evening, where you started from, and where you went?
A. I was at the U. P. saloon.
Q. Who keeps that saloon?
A. Carlson and Nelson.
Q. Where did you board at that time?
A. At Hellstrom's.
Q. At what they call Burgatown?
A. Yes, sir.
Q. Which way is the U. P. saloon from where you boarded then?
A. I don't understand.
Q. Is it north, south, east, or west from where you boarded to where the Carlson saloon is?
A. North, I guess.
Q. What time did you go to Nelson's saloon?
A. I don't know exactly; I guess about 9 o'clock.
Q. When did you go away from there?
A. Just about 12 o'clock.
Q. You know what time it was when you left?
A. The saloon keeper told me it was a quarter after twelve.
Q. Then where did you go?
A. I went down home.
Q. Who was with you?
A. John Trusk.
501 Q. Was he with you at the U. P. saloon?
A. Yes, sir.
Q. You came down together?
A. Yes, sir.
Q. Down by your boarding house?
A. Yes, sir.
Q. Did you stop there any?
A. No, sir.
Q. Then where did you go from the boarding house?
A. I was not in the boarding house.
Q. When you came by there?
A. Charley Thiede's saloon.
Q. Could you see a light from Burgatown to his saloon?
A. Yes, sir; I could see a light from the Rio Grande track.

Q. The window curtains were up so that you could see the light, where was the light?

A. I see the light in the windows.

The COURT. Those questions are leading.

Q. What did you do?

A. I went in there.

Q. Who went in with you?

A. John Trusk.

Q. Was the door open or closed?

A. Open.

Q. Was there a light in the saloon?

A. Yes, sir.

Q. Who did you see in there when you first went in?

A. Nobody.

Q. What did you do?

A. I called for Charley.

Q. Did you or Trusk call?

A. I called.

Q. How many times did you call?

A. I don't know.

Q. More than once did you call?

A. Yes, sir.

Q. How loud did you call?

A. I called, Charley.

Q. Anybody answer you?

A. No, sir.

Q. Then what did you do?

A. I went outside and called for him.

Q. What door did you go in?

A. The door next the brewery.

Q. When you went outside, how far out from the door did you go?

A. We were standing just outside of the door.

502 Q. Did you see the house?

A. Yes, sir.

Q. How far out did you go from the door?

A. Just behind the door there.

Judge Cherry explains the map.

Q. Tell the jury what door you went in at.

A. I don't remember.

Q. Which door?

A. That door against the brewery.

Q. That would be the south door?

A. Yes, sir.

Q. Could you see the house from where you stood when you came outside?

A. Yes, sir.

Q. What did you see there with reference to there being a light in the house?

A. There was a light in the house; that is all I could see.

Q. Did you call any more outside?

A. Yes, sir; three or four times.

Q. Then what did you do?
A. Then we went in again.
Q. After you went in, what happened then; what did you do?
A. Then we called Charley, and my partner was looking behind the bar and got him out.
Q. What did he say when he waked up?
A. I don't remember him saying anything; he said, yes.
Q. Who spoke to him?
A. My partner.
Q. How did you know he was behind the counter?
A. My partner thought he was there asleep and he looked.
Q. Well, did you see Charley then?
A. I see him when he come up.
Q. Then where did he go?
A. He went behind the bar to get the beer.
503 Q. What was said then; what did you do?
A. We just had a drink.
Q. What did you drink?
A. I can't remember; beer or whiskey, or something like that.
Q. Who paid for it?
A. My partner, Trusk.
Q. Did he buy anything else in your presence?
A. He bought a bottle of whiskey.
Q. What did you do then?
A. We went home.
Q. You saw Charles Thiede when he raised up and when he went around behind the bar?
A. Yes, sir.
Q. Did he stand behind the bar when you bought the drinks?
A. Yes, sir.
Q. Did you see any blood on his hands?
A. No, sir.
Q. Any on his clothes?
A. No, sir; I didn't see any blood.
Q. I will ask you if you saw Charles Thiede next morning after daylight?
A. Yes, sir.
Q. Where?
A. By the saloon.
Q. Did you see him up at Burgatown, he and the sheriff, by your boarding house?
A. No, sir.
Q. Didn't he come up to talk to you and ask you what you knew about this case?
A. No, sir; I didn't see him.
Q. You went down to the saloon after the people gathered down there, do you mean?
A. Yes, sir.
Q. What time was it you went down there?
A. About nine o'clock; I can't remember the time; I thought it was about that time.

504 Q. Was there many people there then?
A. Yes, sir.
Q. Were Thiede's hands tied when you saw him?
A. Yes, sir.

Cross-examination by Judge HOWAT:

Q. When you came out of the saloon, after going in there and not seeing Thiede, you came out from this door far enough so that you could see this house?
A. Yes, sir.
Q. And saw there were lights there?
A. Yes, sir.
Q. Could you say whether Thiede was asleep or not in there, or whether he was pretending he was lying down there asleep? Didn't you say to me last week in my office he didn't appear to be asleep; that you thought he was pretending to be asleep?
A. I don't know.
Q. Did you see Mrs. Thiede there that night?
A. No, sir.
Q. Didn't see her at all?
A. No, sir.
Q. Were you and your partner together when you went there and when you left?
A. Yes, sir.
Q. How much had you drunk at the U. P. saloon before you went there?
A. Three or four glasses of beer.
Q. Drink any whiskey up there?
A. No, sir.
Q. Did you drink any whiskey at Thiede's?
A. I can't remember whether it was whiskey or beer.
Q. Do you know how far it is from the U. P. saloon to Thiede's?
A. Just about——
Q. Half a mile, isn't it, or less?
A. Just about.
Q. How far was it from the U. P. saloon to your boarding house?
A. Just the same thing.
Q. In going from the U. P. saloon to Thiede's you went past your boarding house, didn't you, that night?
A. Yes, sir.
505 Q. Walked past the boarding house?
A. Yes, sir.
Q. Then when you got through with Thiede's you went back to your boarding house?
A. Yes, sir.
Q. How long did you stay at Thiede's; just long enough to get your beer and whiskey?
A. Yes, sir.
Q. Was that all you did?
A. Yes, sir.
Q. Just got beer and whiskey and left?
A. Yes, sir; then we asked to play a game of pool.

Q. Charley said you couldn't?

A. No, sir; Charley said he was not asleep any last night; he had to sleep to-night.

Q. He didn't want you to play pool there that night?

A. No, sir.

Q. You didn't see Thiede when you first went into the saloon?

A. No, sir.

Q. Then you came out and called and saw the house was lighted and stayed there how long—outside?

A. Just about two or three minutes.

Redirect examination:

Q. You say you told Judge Howat in his office you didn't think Thiede was asleep?

A. I don't know whether he was asleep or not.

Q. Did you tell Judge Howat that?

A. I don't know if I did or not.

Q. Who asked you to go to Judge Howat's office?

A. He did.

Q. Since this trial has been going on?

A. Yes, sir.

Q. Who was with you?

A. John Trusk.

Q. You say you talked about playing pool before you left Thiede's saloon. Did both of you talk about it, you and Trusk, or who was it spoke about it?

506 A. I asked him if he would let us play a game of pool.

Q. What did he say?

A. He said no.

Q. It was pretty late then, wasn't it?

A. Yes, sir.

Q. Were the big lamps burning over the pool table or not?

A. I don't know.

Q. The saloon was lit up when you went in, you say?

A. Yes, sir.

Q. Burning before you got there?

A. Yes, sir.

Q. They were still burning when you left?

A. Yes, sir.

Q. They were not put out while you were there?

A. No, sir.

Cross-examination by Judge HOWAT:

Q. How many lamps were there?

A. I don't know.

Q. How was Thiede dressed when you saw him? Did he have a black vest on?

A. He had a white shirt.

Q. Didn't he have on a black vest?

A. The vest looked dark.

Q. Almost black, wasn't it?

A. I couldn't tell you.

Q. Wasn't it about the same color as the one you have on there?
A. It looks dark; I didn't know.
Q. It looked dark?
A. Yes, sir.

Redirect examination:

Q. What kind of a shirt did he have on?
A. White shirt.
Q. And the vest was darker than his shirt? As near as you can state the color of the vest, state what the color was exactly. Do you remember?
A. No, sir.

507 C. J. BIRKNER, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. Charles J. Birkner.
Q. Where do you live?
A. Salt Lake City.
Q. What is your business?
A. I am a painter and decorator.
Q. How long have you lived in Salt Lake City?
A. 10 years.
Q. How long have you been in the business of painter and decorator?
A. Four or five years.
Q. Have you been in any other business in the last four or five years?
A. Police officer for three years.
Q. When was that?
A. Two years ago.
Q. Do you know George Wright?
A. Yes, sir.
Q. The gentleman that has been a witness on this trial?
A. I don't know if he has been a witness or not.
Q. You didn't hear his testimony?
A. No, sir.
Q. Have you seen him around the court room here while you were outside?
A. I believe I seen him once or twice outside in the hall.
Q. How long have you known him?
A. About five or six years.
Q. Do you know what his reputation is for truth, veracity, and honesty?
Judge HOWAT. The question of honesty is not concerned.
Q. Do you know his reputation for truth and veracity?
A. Yes; I know it.
Q. What is it, good or bad?
A. Bad.
Q. I will ask you if you know a man in this town named Christian Stryker?
A. Yes, sir.
508 Q. How long have you known him?
A. A couple of years; probably three years.

Q. Have you known him in Salt Lake in the last three, four, or six months?

A. I have seen him around a great deal; yes, sir.

Q. I will ask you if you know what his general reputation is for truth and veracity?

A. His reputation is worse——

Q. Do you know anything about him?

A. Yes, sir.

Q. What is his reputation for truth and veracity?

A. His reputation is no good.

Cross-examination by Judge HOWAT:

Q. Who did you ever hear say anything about George Wright not being a truthful man?

A. I have heard a good many people; even his own father.

Q. You heard his father say it?

A. Yes, sir.

Q. When was that?

A. He was arrested once sometime ago.

Q. What did he say about him?

A. He said, he is a rascal; he is no good.

Q. He was drunk, wasn't he?

A. Yes, sir.

Q. That is his besetting sin; he drinks to excess?

A. He does.

Q. Do you know anything else against him excepting that?

A. Yes, sir; I do.

Q. What?

A. He had trouble with his wife.

Q. I mean in regard to his being truthful?

A. No, sir; I don't.

Q. Do you know anything against Mr. Wright, excepting that he is addicted to drink; drinks to excess?

A. I don't know anything at all.

509 Q. How long have you known Stryker?

A. Several years.

Q. Who did you ever hear speak about his reputation for truth and veracity being bad?

A. A gentleman on the county building; he rented some room from him. He said, "Stryker, he is a rascal; he ought to be driven out of town."

Q. Did he give the reason why he was a rascal and ought to be driven out of town?

A. Yes, sir.

Q. What did he say?

A. He says he don't pay anybody; he runs everybody down.

Q. When was this he said that?

A. Along in March.

Q. Last March?

A. Yes, sir.

Q. And the trouble at that time was that Stryker had not paid for his room?

A. I don't know anything about that.
Q. That is what the man said, wasn't it?
A. Yes, sir.
Q. You don't know whether Stryker had any money to pay with or not, do you?
A. I don't know anything about that.
Q. Aside from that, do you know anything or ever hear anything against Stryker?
A. Well, I did. He is a man that left his family back East, and his wife.
Q. You heard that?
A. Yes, sir.
Q. When did you hear that?
A. A year ago, probably longer.
Q. You heard that?
A. Yes, sir.
Q. You don't know anything about it yourself?
A. I don't.
Q. Did you hear anything else about him besides that he did not pay for his room last March that he rented, and you heard over a year ago that he had left his family back East; do you know anything else?
A. No, sir; only his general character is no good.

510 Q. Tell me what you have heard; don't show so much feeling about it. Tell me all you have heard excepting those two things.
A. That is all I heard.
Q. That is all you know?
A. That's all I know.

Redirect examination:

Q. That is all you remember, is it, now?
A. That is all I remember.
Q. To refresh your memory I will ask you if you ever heard anything about his associating with lewd colored women.
A. I heard that, too.
Q. Ever hear he kept bar for Thiede?
A. Yes, sir.

511 W. A. SIDNEY, sworn for the defense, examined by Judge Cherry, testified as follows:

Q. What is your name?
A. W. A. Sidney.
Q. Where do you live?
A. Salt Lake City.
Q. How long have you lived here?
A. 10 or 12 years.
Q. What has been your business?
A. I generally follow mining and smelting and laboring.
Q. Been engaged in that business during that time?
A. Yes, sir.
Q. I will ask you if you are acquainted 'the George Wright?
A. Yes, sir.

Q. Do you know whether he was a witness in this case?
A. Not to my knowledge. I knew through the paper he was a witness.
Q. You didn't hear him testify?
A. No, sir.
Q. Did you see him around the court room any since this trial has been going on?
A. I have seen him once.
Q. How long have you known him?
A. I know George Wright six or seven years, maybe more.
Q. Do you know what his general reputation is in this community for truth and veracity?
A. Yes.
Q. State to the jury whether his reputation for truth and veracity is good or bad.
A. It is not good.
Q. Bad, is it?
A. Yes. sir.
Q. Do you know Christian Stryker?
A. I do.
Q. How long have you known him?
A. About three years or so, I am not sure.
Q. Have you known him in Salt Lake City?
A. Yes, sir.
Q. How long have you known him in Salt Lake City?
A. About that time. I never knew him anywhere else.
512 Q. Have you known him in the last five or six months?
A. Yes.
Q. Do you know his reputation for truth and veracity?
A. Yes, sir.
Q. What is it?
A. Bad.

Cross-examination by Judge HOWAT:

Q. Where are you living now?
A. Salt Lake City.
Q. What have you been doing the last three or four months?
A. Working in the city and county whenever there was a chance to work.
Q. How long have you been working there the last three or four months, how many days?
A. I think I got in about a month or three weeks.
Q. The rest of the time you have not been doing anything, have you?
A. Odd jobs, wherever there is anything to do.
Q. Tell what the odd jobs were.
A. I have not been working for anybody since——
Q. How did you get acquainted with Stryker; were you and he friends at one time?
A. No more than I am with anybody else.
Q. Ever have any trouble with him?
A. No, sir.
Q. Where did you meet him or get acquainted with him?

A. I met him here in different places.
Q. Tell what they were.
A. On the street, as well as when he was over here tending bar.
Q. When he was tending bar you were one of his customers, weren't you?
A. No, sir.
Q. You were in there?
A. Yes, sir.
Q. Who did you hear say anything about Stryker's not being truthful?
A. I heard men on the job where I worked.
513 Q. What did they say about him?
A. They didn't care about having anything to do with him, they didn't believe what he said——
Q. Who said that?
A. I don't know the second name of the man, Harry his name was, he was working down there.
Q. Can't you give his other name?
A. I don't know his other name; that is what we called him when we were working there.
Q. What did Harry say about Stryker?
A. He said he would not believe him; they were having some conversation and his name was mentioned and this man laughed and said, Well, it does not cut no figure what he said anyway, he would not believe him.
Q. Who else did you ever hear anything about Stryker?
A. Different parties; I know another fellow we called Louie.
Q. What was his last name?
A. I don't know.
Q. You don't know the last name of any of these people, do you, apparently?
A. As a general thing we were working there with men and never inquired their last names; we would say John or——
Q. How do you know this man's name was Stryker; what did they call him?
A. That is the only name I ever heard him called.
Q. I thought you said they called him by his first name?
A. I didn't work with him; I am talking about where I am working.
Q. Did you ever hear anybody else say anything about Stryker?
A. No, sir; not that I recollect; I heard different opinions.
Q. Who did you ever hear talk about Geo. Wright not being a truthful man?
A. A fellow named Brownie we called him.
514 Q. Was that his right name?
A. I don't know; that is what we called him, Brownie.
Q. What was his first name?
A. Jimmie, some calls him Jimmie, and some calls him Brownie.
Q. Do you know where he is now?
A. No, I don't; I know he is working some place.
Q. Did you ever hear anybody else say anything about Wright's not being a truthful man?
A. I heard his own father say he was no good.
Q. He gets drunk, don't he?

A. Yes, sir.

Q. Wasn't it with reference to that his father was making the complaint that his boy was no good; that he was a drunkard?

A. Yes, I think so.

Q. Now, could you tell me where I could find any of those three men you mentioned, the two you say spoke about Stryker not being honest or truthful, and this man you say spoke about Wright?

A. I know where Harry lived last, east from the city and county building.

Q. When was that?

A. When I was working there.

Q. When was that?

A. Some couple of months ago.

Q. You don't know his name?

A. Harry.

Q. Where is Louie?

A. I couldn't tell you.

Q. Where is Brownie?

A. I was told he was cooking some place.

Q. Where?

A. That I couldn't tell you.

Q. You don't know where to find one of these three men, do you?

A. I don't know whether that man lives there yet; he might live there yet for all I know.

515 Redirect examination:

Q. Those names are all that you can remember hearing express any opinion?

A. That is all just now.

Q. Can you say that you have heard other people talk about these men at other times, but you can not remember who they are?

A. I have heard it at different times.

Q. Have you ever heard them mention any particular circumstance in regard to Stryker as to what he was engaged in doing or what his conduct was?

A. Yes, I have heard that.

Q. Heard a discussion of his conduct?

A. Yes, sir.

Cross-examination:

Q. What did these other people say about Wright; did you ever hear anybody in the world say Wright was not truthful?

A. When they talked about Wright it was not exactly about being truthful, but that they didn't think much of him.

Q. No; he was a bum; is that it; he was a drunken fellow, and just bummed around?

A. Yes, sir.

Q. Drank to excess and got drunk; no good, as you call it?

A. Yes, sir; his own father told me that.

Q. What did you hear the folks say about Stryker. Tell it all; the whole thing; what was anything you ever heard anybody say; tell us who it was and where to find them.

A. I know that man might live there yet.
Q. What was anything else you ever heard about Stryker?
A. I heard it said about his leaving his folks.
Q. You don't know whether that is true?
A. No, sir.
Q. Anything else; ever hear they kept saloon for Thiede?
516 A. No, sir.
Q. How long have you known Thiede?
A. I have known him for eight or nine years; something like that.
Q. Been pretty friendly with him, haven't you?
A. Not more than with anyone else. I can't tell exactly.
Q. Did you ever live down in that neighborhood?
A. I used to work there, but not when he was there.
Q. He used to be in Salt Lake City?
A. Yes, sir.
Q. You have known him eight or nine years?
A. Yes, sir.
Q. When did you first get acquainted with Thiede?
A. The first time I got acquainted with him was at Sandy, coming from Bingham.
Q. How long ago was that?
A. Eight years, or something like that.
Q. Have you ever been past his saloon down there?
A. I have been there.
Q. How often?
A. Off and on for the last few years; that is, going past and stay a little while and go home.
Q. You would drop in and see Charley always?
A. Not exactly; I was acquainted with Mrs. Thiede as well as Charley.
Q. With Charley?
A. Yes, sir.
Q. And Mrs. Thiede?
A. Yes, sir.
Q. Mrs. Thiede is dead?
A. Yes, sir.
Q. Charley is living?
A. Yes, sir.
Q. And you dropped in to see him how often during the last two or three years?
A. A dozen times; maybe more.
Q. How did you come to be a witness here; how did they know you knew about Stryker?
517 Q. How did they find out that you knew about Stryker and Geo. Wright; who did you tell about it first?
A. As the trial went on, people will talk about it, and I told my experiences.
Q. Who were you talking with?
A. Different parties.
Q. Who were they?
A. Talking the matter over. I talked with a good many.
Q. Name one of them.

A. A man named Palmer.
Q. What is his first name?
A. I don't know.
Q. Have you been attending the trial in the court room?
A. I stepped in here once when it first started; I have not been in since.
Q. When were you subpœn'ed?
A. Two or three days ago.
Q. Last week, wasn't it?
A. No, sir.
Q. Do you know Charles Thiede's sisters down at Sandy?
A. No, sir.
Q. Or their husbands, Smith and Pearson?
A. Just by sight.
Q. Never spoke to Pearson?
A. Just a few words.
Q. When was that?
A. I met him here in town.
Q. How long ago?
A. I spoke to him yesterday.
(Objection as not cross-examination, immaterial and irrelevant, and motion made to strike out concerning Pearson and Smith.)
Judge HOWAT. I want to show this witness's motive.
The COURT. On that point it is admissible.
(Exception.)
Q. When did you first know Pearson?
A. I think I was introduced to him about a year ago.
Q. Did you ever talk with him since this trial commenced?
A. Yesterday.
518 Q. You talked with him yesterday?
A. Yes, sir.

Redirect examination:

Q. Have you talked to me about what you knew about this case?
A. Yes, sir.
Q. In my office?
A. Yes, sir.
Q. Came over there at my request, did you not?
A. Yes, sir.
Q. You say you are acquainted with Charles Thiede and his wife in her lifetime?
A. Yes, sir.
Q. And have been there?
A. Yes, sir.
Q. Did you ever see any wound or bruise upon her face at any time you were there?
A. No, sir.
Q. Did you ever see them when they were together?
A. Yes, sir; many a time.
Q. At the time you have seen them together, state whether you ever saw any difficulty between them or any quarrel.
A. No, sir; I have not.

Q. What were their relations, when they were in your presence, while together, as to being friendly or otherwise?

A. To me they seemed to get along very well, good enough; they never seemed to have any words while I was there.

Cross-examination:

Q. You said you had been there about a dozen times in the last two years?

A. Yes, sir; and then I saw them often in the city.

Q. Did you see her every time you were there, or did you go in the saloon and see Charley?

A. I generally went into the house.

Q. Did you know her in Germany?

A. No, sir.

519 Q. Did you know him in Germany?

A. No, sir.

Q. You never saw any bruises on her face when you were there?

A. I have not.

Q. There were twelve times in the last two years when you saw her, and you think at those times there were no bruises on her face?

A. No, sir.

520 Mr. AHLBERG, recalled.

Cross-examination by Judge HOWAT:

Q. You stated when Dr. Farrabee came to Haynes' store to wake you up, did he come in?

A. He did not.

Q. Did he come in any time when he was there?

A. No, sir.

Q. State whether there was any conversation at that time between the defendant Thiede and Dr. Farrabee.

A. Not in the store.

Q. Was there any outside in your presence?

A. No, sir.

Q. Did you hear any conversation between the doctor and Thiede at that time at all?

A. No, sir.

Q. You say the doctor was outside all the time?

A. The door was open.

Re-direct examination:

Q. Where was Thiede at this time?

A. Thiede went right through the store.

Judge CHERRY. I want to ask a question that is not cross-examination of this testimony, but goes back to yesterday. State if you succeeded or attempted at this time to telephone to Sandy.

A. Yes, sir.

Q. Why was it you didn't get them?

A. There was nobody to answer in Sandy. Central in Salt Lake answered that they couldn't get anybody in Sandy to answer the telephone.

Q. You don't know whether the instrument was out of order; you didn't have direct connections with Sandy from your office?

A. No, sir.

Q. You had telephoned to Salt Lake to be connected up here?

A. Yes, sir; they were going to connect with Sandy and then let
521 me know. They couldn't find anyone at Sandy, so the lady in the central office told me.

Q. You went right in the box when the doctor went away, did you?

A. Yes, sir.

Q. Where was Charley?

A. Charley come into the box, too, at the same time.

Q. While you were trying to get Sandy about how much time was spent there?

A. Two or three minutes.

Q. During that time did Thiede say anything to you—did he talk to you?

A. No, sir; I was listening at the instrument to get the answer.

Q. From the time he came into the store, and after the doctor went away, did he—what did he do in there? Tell what he did, if anything.

(Objection as incompetent.)

The COURT. You may proceed if there is no objections.

A. He walked off and on, and said, My wife is murdered; my wife is murdered. That is the words he said; and he had his hands over his face and looked very much excited in his face; and he come over and asked me, Can you get Sandy? and I said no.

Q. I don't care what he said; I want to know what he did with reference to walking the floor—whether he did or not?

A. He walked from one end of the store to the other.

Q. I will ask you what effect it had on you—his being in there—what condition you were in?

(Objection as incompetent, immaterial, and irrelevant.)

The COURT. It would not be material.

522 Q. Do you mean to say, Mr. Ahlberg, that Dr. Farrabee and Mr. Thiede had no conversation at all after they got to the store, with each other?

A. No, sir; not that I heard. As soon as I opened the door Thiede come right in the store, walked right in ahead and wanted me to telephone to Sandy; and at the same time he mentioned to telephone the sheriff, but no telephoning to the sheriff was done.

Q. I am asking you about the conversation.

A. No, sir.

Q. Did you hear any conversation on the outside before you opened the door?

A. I couldn't say; I didn't understand any.

Q. Could you hear voices?

A. Yes, sir.

Q. Did the doctor, when you opened the door, inform you the object of waking you, what was up, what was going on, what had happened?

A. Yes, sir.

Q. About how long did it take him to tell you the circumstances—to tell you what had happened?

A. At the same time he called me he said——

Q. About how much time did he stand there and talk to you before he went away? Can you give any estimate of how long you stood there and listened to the matter?

A. No, sir; I left the doctor and went in to telephone, and when I came back the doctor was gone.

Q. How long did you stand there talking to the doctor before you went to the telephone?

A. No time at all; I went right at it.

Q. He had to tell you what to telephone?

A. Mr. Thiede told me to telephone.

523 Q. Did Thiede do the talking at the door?

A. No, sir.

Q. I mean from the time the doctor called you up and you got up and opened the door, who did you speak to first or who spoke to you?

A. Dr. Farrabee called me.

Q. He told you why he called you and what he wanted with you, did he?

A. Yes, sir.

Q. I want to know how much time transpired at that door before you turned and went to the telephone?

A. About one minute.

Cross-examination by Judge HOWAT:

Q. Your telephone connection was all right to Salt Lake?

A. Yes, sir.

524 ANNIE THIEDE, a witness sworn for the defense, examined by Judge Cherry, testified as follows:

Q. How old are you?

A. Nine.

Q. Do you know what you are to do when you are sworn in court?

A. Yes, sir.

Q. What?

A. Tell the truth.

Q. Do you know whether you could be punished if you didn't tell the truth?

A. Yes, sir.

Q. You have been going to school, have you?

A. Yes, sir.

Q. How long?

A. From six years.

Q. When you are sworn you will simply state what you know.

(Witness sworn.)

Q. How old are you?

A. Nine years.

Q. What is your name?

A. Annie Thiede.

Q. When were you nine years old?

A. March 11th.

Q. Last March?

A. Yes, sir.

Q. Where have you been living for the last two or three years?
A. I lived in Murray, and then we were in the old country before six months.
Q. Did you live with your father and mother?
A. Yes, sir.
Q. What was your mother's name?
A. Mary Thiede.
Q. Did you go to school while you lived there?
A. Yes, sir.
Q. You and your father and mother lived at a place where there is a saloon, and a brewery, and a house, did you?
A. Yes.
Q. Can you tell the jury where your father slept for the last year or two?
A. In the saloon.
525 Q. Did he sleep down there every night?
A. Yes, sir; sometimes he slept at the house.
Q. Who slept in the house?
A. Me and my mother.
Q. Do you know if your mother received any presents from your father in the last two years?
A. Yes, sir.
Q. What were they that you can remember of?
A. It was some beads around the arms, and one for me and a breastpin and one around my neck.
Q. State whether your mother had a gold watch in her lifetime.
A. Yes, sir.
Q. Do you know where she got that?
A. Father gave it to her.
Q. Do you know how long ago?
A. No, sir.
Q. Do you remember going to Germany from Salt Lake City?
A. Yes, sir.
Q. Who went with you?
A. My mother and father.
Q. Do you know how long you staid in Germany?
A. No, sir.
Q. Do you remember coming back from Germany?
A. Yes, sir.
Q. Who came back with you?
A. My mamma.
Q. Where was your father?
A. He was in Murray; he had come back before we did.
Q. Your father came before you did and you and your mother remained in Germany, is that correct?
A. Yes, sir.
Q. When you came back do you know what place you came to?
A. We come to Salt Lake City and from Salt Lake City we went to Murray at that time.
Q. Do you know what time you got to Salt Lake City?
A. No, sir.
Q. Do you remember whether it was daytime or night?

526 A. It was in the afternoon.

Q. Do you remember where you went that day, whose house you went to, or how you got down to Murray?

A. My pappa was with a wagon.

Q. Papa came up and met you?

A. Yes, sir.

Q. And took you down?

A. Yes, sir.

Q. When you got down to Murray, your place, were there any changes made in the place while you were gone?

A. Yes, sir.

Q. What had been done?

A. Papa bought some new chairs and new carpets and lots of things.

Q. Was the brick house built when you went to Germany?

A. Yes, sir.

Q. Had you lived in it?

A. No, sir.

Q. It was built, though?

A. Yes, sir.

Q. When you came back what was done about the brick house, do you remember?

A. It was all fixed up nice with carpets and lots of things, nice things.

Q. Where did you go to live when you came back from Germany; which house did you go to live in?

A. We thought we were going to live in the old one.

Q. Which house did you move in when you came back?

A. The new one.

Q. Lived in that ever since until your mamma was killed?

A. Yes, sir.

Q. Tell the jury if you have ever seen your mamma with her face hurt or bruised.

A. Yes, sir.

Q. How many times?

A. Two or three times.

527 Q. Do you know of your own knowledge how she got her face hurt any of those times?

A. Yes, sir.

Q. How?

A. She fell down by the stove.

Q. Did you see her fall?

A. No, sir; I was out doors.

Q. Where was she when she fell down?

The COURT. Don't press the witness on a thing she don't know. She is competent to testify what she sees and knows, but she cannot tell what she didn't see. She says she was out doors when she fell down. Let her state whatever she saw and knows herself.

(Exception.)

Q. Did you see your mother after she had fallen?

A. Yes, sir; my papa was in the brewery, and he come and picked her up.

Q. Where were you?

A. I was out doors, and I run and told him.

Q. Did you see your mother before you went to tell him; did you go into the house?

A. Yes, sir.

Q. Where was she then?

A. She was fallen down.

Q. Where was she?

A. She was fall*ed* down on the floor.

Q. In reference to the house or saloon or brewery or out doors, where was she?

A. She was in the kitchen.

Q. What did you do?

A. I went and saw her, and then I went and told papa and he went and picked her up.

Q. Did you see any hurt on her face after that?

A. Yes, sir.

Q. Where was it?

A. Somewhere here by the ear, by the eye.

Q. Do you remember when that was?

A. No, sir.

Q. Was it after you came back from Germany?

A. Yes, sir.

528 Q. Was it in the brick house?

A. Yes, sir.

Q. Do you know of any other time that she received a fall or hurt?

A. No, sir.

Q. That is the only one you remember of?

A. Yes, sir.

Q. Tell the jury whether or not you have ever seen your father strike your mother.

A. No, sir.

Q. Never saw him strike her?

A. No, sir.

Q. Ever see him slap her with his hand?

A. I don't remember.

Q. Did you ever see your father show any kindness or any special act of kindness to your mamma?

A. Yes, sir.

Q. What?

A. Kiss her and hug her and like that.

Q. Do you remember how often you have ever seen your father kiss your mother?

A. Every morning, and he would say good morning and she would say good morning and like that when he went to town.

Q. I will ask you if you noticed him doing anything when he went to town? If so, state what it was. When he would go away what would he do, if anything? Your papa *u*sed to go to Salt Lake City or go away from home sometimes, didn't he?

A. Yes.

Q. When he would start to go away what would he do? Do you remember anything he would do you have not told about?

A. When he would go away he would kiss her and say good-bye.

Q. I will ask you if you know anything about the clothing that your mamma had?

A. Yes, sir.

Q. Tell the jury anything you know about her clothing; what kind of dresses she had.

A. Black and a red one and pretty dresses and a silk one; a silk dress and a black dress and lots of dresses.

529 Q. Do you know where those dresses were made; who made them?

A. Yes, sir.

Q. Where were they made?

A. A sewing lady; a lady sewed them.

Q. At your house?

A. No, sir.

Q. Do you remember the occasion and time your mamma was killed?

A. Yes, sir.

Q. You heard of that, did you?

A. Yes, sir.

Q. Where were you when you heard of it?

A. I was to my teacher, and I met Mr. Smith and them on the road, and they told me my mamma was killed.

Q. Where were you going?

A. To school.

Q. What teacher were you with?

A. Miss Noble.

Q. When did you go to Miss Noble's house?

A. Monday morning I went to school; in the afternoon I went to her house.

Q. How did you come to go home with Miss Noble that evening?

A. Why, I asked my papa and mamma if I could go.

Q. What did you want to go there for?

A. To stay two or three days and have some fun.

Q. How did you go from the schoolhouse to Miss Noble's house?

A. Walked.

Q. Tell all about what was said and done about asking your papa and mamma to go and stay with the school-teacher.

A. I asked mamma first and she said I could go, and she had the clothes fixed, and then I asked my papa, and mamma said, first you must ask papa, and then I asked him, and he would not let me go, and I begged and begged, and he let me go afterward, and he said, yes, you can go and stay two or three days.

530 Q. Do you remember where you slept on Sunday night before you went to the school marm?

A. I slept with my papa.

Q. Where?

A. In the saloon.

Q. Do you know Mr. and Mrs. Soderholm?

A. Yes; I know the little girl.

Q. Do you know her father?

A. I don't know him very good; I heard their names.

Q. You have seen him, have you?
A. Yes, sir.
Q. You have seen Mrs. Soderholm, too?
A. Yes, sir.
Q. State to the jury whether you ever went to their house about a year ago, about 11 o'clock at night, hunting for your mamma.
A. No, sir.
Q. Did you ever go up to their house at night?
A. No, sir.
Q. Never did?
A. No, sir.
Q. State whether you ever went up to their house at night hunting for your mamma, and they came out with you to help you find your mamma, and came down to the bridge east of the saloon with you.
A. No, sir.
Q. Stat. whether or not, at any time in the night, you ever saw your mamma in the upper story of the brewery, looking out of the window.
A. No, sir.
Q. You never did?
A. No, sir.
Q. Can you explain to the jury why it was you slept with your papa that Sunday night?
A. Because they had a little trouble that night.
Q. Were you present; did you hear the trouble?
A. Yes; I heard some.
531 Q. State to the jury all you know about that trouble.
A. I went into that old man's house; we used to live there, and my mamma was sick, and I said come on mamma, and she said, No, I am going to stay here; my papa was there too.
Q. Tell what happened?
A. And I said, Oh, come on ma, let us not stay here, and he said, Oh, come on let's go, and went out after and then I went into the saloon. I felt kind of sleepy and I laid down on my papa's bed and he come afterwards too.
Q. Did you sit up any, walk around the saloon any, or not?
A. No, sir; I was just looking like that, it was my papa.

Cross-examination by Judge HOWAT:

Q. When you went that Monday morning to Miss Noble, the teacher, you took a bundle of clothes, didn't you?
A. Yes, sir.
Q. Didn't you tell Miss Noble that morning when you went there and first saw her, your papa had sent you to stay with her a month, and said you might stay a month with her; isn't that what you told her?
A. He said I could stay.
Q. Didn't you tell Miss Noble that your papa said that you could go and stay a month with Miss Noble?
A. I guess I made a mistake.
Q. Did you tell that to Miss Noble or not, that your papa told you that you could go and stay a month with Miss Noble?
A. Yes, sir.
Q. Did you say a word to her about your mamma sending you there?

A. No, sir.
Q. You didn't mention that to Miss Noble at all did you?
A. No, sir.
532 You never saw your papa strike your mother in your life did you?
A. No, sir.
Q. Did you ever see them have any trouble before that Sunday night your mother was killed?
A. Yes, sir.
Q. Was that the first time you ever saw them have any trouble?
A. Yes, sir.
Q. About a year ago now didn't you go over to Soderholm's, run over there crying, and say that papa had been killing your mamma, and she had gone away you didn't know where?
A. No, sir.
Q. Didn't you go there; beyond the bridge a little nearer the brewery than the bridge that night, didn't your papa come out and say he would shoot them if they didn't go away?
A. No, sir.
Q. Didn't you go back next day or soon after that and tell Mrs. Soderholm, and the little girl Victoria, your papa gave your mamma an awful licking that night after you went home?
A. No, sir.
Q. You didn't say that?
A. No, sir.
Q. Where have you been living since your mamma was killed?
A. In Murray.
Q. Who with?
A. With my mamma and papa.
Q. Since your mother was killed?
A. Sandy, with my auntie, Mrs. Pearson.
Q. And Mrs. Smith.
A. Yes, sir.
Q. You know that they are your father's sisters.
A. Yes, sir.
Q. Where are these nice dresses your mother had in her life time; Mrs. Smith and Mrs. Pearson have them, haven't they?
533 A. Yes, sir.
Q. They have taken all the nice things your mamma had?
A. Not all of them.
Q. They have taken the dresses?
A. Yes, sir.
Q. And the furniture?
A. No, sir.
Q. Ever talk with them about this matter in the last six months?
A. They said I should tell the truth, that is all.
Q. Never spoke about the case except that at all?
A. No, sir.
Q. Were they the only people you have talked with?
A. Yes, sir.
Q. Who told you to say that, that your aunties told you to tell the truth; who told you to say that, if anyone?

A. My aunties said you must tell the truth; when you go there.

Q. Did she tell you you must tell the jury you were told to tell the truth?

A. Yes, sir.

Q. Have you been living with anyone else down there since then but your aunties?

A. No, sir.

Q. These are the only people?

A. Yes, sir.

Q. You say you have seen your mother with her face bruised two or three times?

A. Yes, sir.

Q. And you know she fell down once; you saw her lying on the floor?

A. Yes, sir.

Q. Do you know what was the matter with her?

A. Yes, sir.

Q. What was the matter?

A. She was a little sick.

Q. Was she drunk?

A. Yes, sir.

Q. Who told you to say she was drunk?

A. Nobody.

Q. Why do you look over there when I ask you questions before you answer them; why don't you look at me and answer them?

534 *Q.* Why do you look where your papa is sitting when I ask you questions?

A. I wasn't looking over there.

Q. You say she was drunk that day?

A. Yes, sir.

Q. Is that the only time you ever knew of her falling down?

A. No, sir.

Q. I thought you said that was the only time you knew of her falling down; what makes you look over there when I ask you about that; when was it she fell down; how long ago?

A. I don't remember.

Q. Summer or winter?

A. Summer.

Q. How long before your mamma was killed?

A. I don't remember.

Q. How long after you came back from Germany?

A. About two years.

Q. Was it a year before your mamma was killed?

A. Yes, sir.

Q. Where was the bruise on her cheek; what part?

A. Here.

Q. Which side?

A. The right side.

Q. Point your finger on the spot?

A. (Witness indicates under her eye).

Q. Was it a bruise or black eye; which was it?

A. Kind of blue and black.

Q. Where had your mother been that she got drunk that day?
A. I don't know; I had just come from school.
Q. Was it in the afternoon?
A. Yes, sir.
Q. Your papa came and helped her up?
A. Yes, sir.
Q. Was kind and good to her?
A. Yes, sir.
Q. Always kissed your mother in the morning and said good night, and when he went away he kissed her?
A. Yes, sir.
535 Q. Ever kiss her outside when he got into the wagon at the door?
A. Yes, sir.
Q. Outdoors?
A. Yes, sir.
Q. How often have you seen him kiss her outdoors when he was going to drive off with the wagon; a good many times?
A. Yes, sir.
Q. How many times have you seen your mother fall down or know of her falling down?
A. Three or four times.
Q. Just about as many times as she had bruises?
A. Yes, sir.
Q. Did you ever see your papa strike your mamma at all?
A. No, sir.
Q. Ever slap her with his hand on the face?
A. I don't remember.
Q. You don't remember he ever struck her with his hand at all, do you?
A. No, sir.
Q. Never at any time?
A. No, sir.

Redirect examination:

Q. You say you took a bundle of clothing with you when you went from Miss Noble's house from the school?
A. Yes, sir.
Q. What was it you took?
A. A dress and an apron.
Q. Did you take any night clothes?
A. No, sir.
Q. Who fixed up your clothes to take over there?
A. My mamma.
Q. You say you told Miss Noble you were going to stay a month; do you remember telling her that?
Judge HOWAT. That is not what she said.
Q. Do you remember what you told Miss Noble about staying there; what you said to her?
A. I said, Good morning, Miss Noble, and she said, Good morn-
536 ing, Annie. I said, We are going to have lots of fun now. She said, What is it? My papa said I could stay for awhile.
Q. Is that what you remember?

A. Yes, sir.

Q. Did you tell Miss Noble your papa said you could stay at her house a month?

A. I don't remember.

Cross-examination:

Q. Why didn't you tell her your mamma said you might stay?

A. Because I didn't remember; I just said my papa.

The court gave the customary admonition to the jury and adjourned until 2.00 p. m.

537 THURSDAY, 2.00 p. m.

ANDREW SJOBLOM recalled by Judge Cherry:

Q. You stated you delivered some groceries at Thiede's place on Monday.

A. Yes, sir.

Q. Can you state what they were?

A. Yes, sir.

Q. What were they?

A. On April 30th there was coffee, 1.10; granulated sugar, 50; powdered sugar, 50.

Q. Do you know whether they were delivered at the house or saloon?

A. Saloon.

Q. Was that the last goods you delivered there?

A. Yes, sir.

Cross-examination by Judge HOWAT:

Q. Can you say how many goods you delivered to the defendant and his wife during the months of March and April, 1894?

A. Yes, sir.

Q. How much altogether?

A. $1,170.

Redirect examination:

Q. From what date?

A. March 5th to April 30th.

Cross-examination:

Q. That included all of April and 26 days in March?

A. 5th of March to the 30th of April.

Q. That is your bill for March and April?

A. Yes, sir.

Redirect examination:

That is all the bill for March and April?

A. Yes, sir.

538 CHARLES H. THIEDE, the defendant, being duly sworn, testified as follows:

By Judge CHERRY:

Q. What is your age?

A. 34.

Q. When is your birthday?
A. The 30th day of July.
Q. What year?
A. 1860.
Q. Where were you born?
A. Germany.
Q. What place?
A. Grieswald.
Q. How long did you live in Grieswald?
A. Till 1874; twenty years ago.
Q. That was your home?
A. Yes, sir.
Q. What were you engaged in doing during that time?
A. I was sailing around the world.
Q. From what time?
A. 1874.
Q. How old were you when you went to sea?
A. 13 years seven months.
Q. Where did you locate then when you quit the sea?
A. I was a soldier in the navy.
Q. When you quit that? How long were you in that?
A. Three years in the German navy.
Q. Then where?
A. Run a hotel.
Q. Where?
A. Germany, Grieswald.
Q. How long did you follow that occupation?
A. Two years.
Q. Then where did you go?
A. Salt Lake City.
Q. When were you married?
A. 1883, the 20th of November.
Q. Where?
A. Grieswald.
Q. Who did you marry?
A. Mary Thiede.
Q. What was her name?
A. Mary Franks.
539 Q. Marry her in Grieswald?
A. Yes, sir.
Q. Was she a native of that town?
A. Yes, sir.
Q. Where was your child born?
A. It was born there, too.
Q. When did you come to America?
A. In the fall of 1885.
Q. Did your wife and child accompany you?
A. No, sir; they stayed home.
Q. When did they come?
A. 1887.
Q. When they came, where did you locate?

A. Murray.
Q. Is that where you lived when they came?
A. Yes, sir.
Q. At the place where you l ast April?
A. Yes, sir.
Q. What business did you follow while you were at Murray?
A. Brewery and saloon business.
Q. You lived there at that place after your wife came up until what date?
A. Up till the time of my arrest.
Q. When were you arrested?
A. May 1st.
Q. When you first came to Murray, what buildings or improvements were on those premises? State in a general way.
A. There was not much of anything of buildings there.
Q. Was the brewery there?
A. Yes, sir; some of it.
Q. Was the saloon building?
A. Yes; a small saloon building.
Q. Is it the same one that is now there?
A. Some part of it; yes, sir.
Q. There has been additions put to it since that?
A. Yes, sir.
Q. Who put them there?
A. I did.
Q. Was the old house there that joined the brewery?
A. Yes, sir.
Q. That was there when you came there?
A. Yes, sir.
Q. In what particular house or building did you live?
A. I slept when I first came up in the brewery.
540 Q. Did your family sleep there?
A. My family was not there when I first came.
Q. After your family came, where did they live?
A. In the house next to the brewery.
Q. When was the brick house put up?
A. 1890.
Q. Was it used as a residence from the start?
A. Yes, sir.
Q. Who lived in it?
A. My wife.
Q. Did they live in it in 1890?
A. No, sir; I built it in 1890. It was not finished.
Q. When did you occupy it as a home?
A. In the summer of 1891.
Q. I will ask you whether your wife remained in the United States all the time from the time she came over here first?
A. No, sir.
Q. When did she go back?
A. The latter part of July, 1891.
Q. Had you lived in the brick house before you went to Germany?

A. I lived there a little while; yes, sir.
Q. Who went to Germany?
A. Me, my wife, and little daughter.
Q. How long did you stay?
A. I stayed about four months.
Q. When did they come back?
A. The latter part of July, 1892.
Q. Was there any changes in the brick residence while your wife was absent?
A. Yes, sir; I had it painted up and fixed up at that time. I didn't have it fixed up before.
Q. Did you or did you not get any furniture while your wife was gone?
A. I had the whole house furnished and fixed up and painted up.
541 Q. Was that while your wife was absent?
A. Yes, sir.
Q. Do you remember about her trip back here, whether or not she sent you word, or did you send for her and she write to you, or how did you know she wanted to come?
A. We were writing letters all the time to each other; she wrote to me and I wrote to her.
Q. How did she get here? Who furnished her the means to come?
A. I sent a ticket to her.
Q. Where did you get that ticket?
A. The U. P. office, on Main street.
Q. Salt Lake City?
A. Yes, sir.
Q. I will ask you before you went to Germany what you kept around your place? Did you keep any team or wagon, stock, cattle, or animals of any kind?
A. Yes, sir.
Q. What business did you follow?
A. Saloon and brewery.
Q. Did you have any animals around there?
A. Yes, sir.
Q. What did you have?
A. Sometimes I have half a dozen or eight animals; maybe I only got two. At the time of my arrest I only got two.
Q. What were they?
A. Horses.
Q. Anything else?
A. I had lots of chickens and turkeys and geese and ducks, and all that kind of animals.
Q. State if you heard the evidence of Mr. Soderholm and Mrs. Soderholm and Victoria Soderholm. Did you hear their testimony in this case?
A. Yes, sir.
Q. You heard Mr. and Mrs. Soderholm testify in reference to a transaction they claimed they had witnessed one Sunday morning in the
542 neighborhood of the old house and brewery? You may state to the jury whether or not that is true.
A. No, sir.

Q. They stated in their testimony that you dragged your wife by the hair and kicked her and hit her with a stick; state whether you ever did that in your life.

A. Never in my life.

Q. Did you on that occasion or at any other time?

A. No, sir; never.

Q. You heard the testimony of Mrs. Soderholm and the little girl?

A. Yes; I did.

Q. In reference to your coming out of the door of the saloon about a year ago one night quite late, and that you said if they didn't go away you would shoot them; state to the jury whether you ever said anything of that kind or any transaction of that kind happened.

A. No, sir; I never see the lady before till I saw her in the court here.

Q. Never saw her before?

A. No, sir.

Q. Have you seen him?

A. I might have seen him, but he never was in my place of business; never.

Q. You heard the witness Geo. Wright testify, did you, in this case?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir.

Q. Did he work for you?

A. Yes, sir.

Q. As he stated?

A. Yes, sir.

Q. How long?

A. He was a few days there.

Q. You heard him state that you shoved your wife out of the saloon on one occasion and called her a drunken vagabond; what do you say to that?

A. He was working for me when my wife was in the old country.

543 Q. Did he ever work for you since?

A. No, sir; but I see him bum around there.

Q. Do you ever remember pushing your wife out of the saloon and calling her a drunken vagabond?

A. No, sir.

Q. You heard the witness Christian Stryker testify in this case?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir.

Q. When did he work for you?

A. He worked for me twice. He worked for me when I put up the building; I had quite a few men working for me, about a dozen at a time; that is the first time.

Q. That was 1890?

A. 1890 I guess, I am not sure; it might have been 1889; I always had lots of men around me helping there; I am not sure whether it was 1889 or 1890.

Q. When he worked for you?

A. Yes, sir.

Q. Do you know how long?

A. He didn't work long, I know.

Q. Did he work for you after that?

A. He came last winter and asked if he could stay around my place; he had nothing to do. I told him, yes; he was broke and I took him in again.

Q. You heard his statement, did you?

A. Yes, sir; I did.

Q. As to your conduct with your wife at meal hours at the house?

A. Yes, sir.

Q. State now whether it is true you never ate a meal in peace except on Christmas and New Years, during the time he was there.

A. I always eat my meals with my wife in peace and never any other way.

Q. Did you ever have any dispute or any loud or sharp talk with your wife at meal time that you remember of?

544 A. We might have talked at meal times.

Q. I mean any scolding talk?

A. Not to my knowledge or my remembrance.

Q. Do you remember the occasion of Stryker grinding some knives for you?

A. Yes, sir.

Q. What was the circumstance of that? Tell to the jury just how it was.

A. That was away last fall; he might have been there a day or two; so my wife said one day, as he had nothing to do, to get the knives out of the house. She brought up about a dozen; I don't know how many; I guess about a dozen; brought up the table knives, you know, and she had a big knife and I had a big knife in the saloon, and sent him to the Vinegar Works, and he sharpened them and some pocket knives I used around the saloon in my pocket. He took the whole bunch over and sharpened them.

Q. Do you remember any special conversation about any particular knife being sharpened?

A. I told him to sharpen them all.

Q. You heard his testimony about a special knife you wanted made specially sharp?

A. Yes, sir.

Q. What was said about that?

A. I said for him to go and sharpen all them knives.

Q. Did he take any of them back and do it over on an oil stone or anything of that kind, as he testified?

A. I don't think he did.

Q. You don't remember that?

A. No, sir.

Q. Do you remember ever having had any talk with him evenings along last Christmas or New Years?

A. About what?

545 Q. In the saloon in reference to the Irvine divorce case?

A. We might have talked about that, I am not sure.

Q. Were you reading any papers at that time?

A. Yes, sir; I generally take them all; the Herald, Tribune, and I had five or six different kinds of papers.

Q. Along about December last or the fore part of January do you remember whether or not there was anything published in those papers in reference to the Irvine divorce trial?

A. Yes; I do.

Q. Do you remember reading any of it?

A. I think I did.

Q. You read the papers that you took?

A. I generally read the papers every evening and morning.

Q. You read English, do you?

A. Yes, sir.

Q. Do you recollect ever talking to Mr. Stryker, commenting on the Irvine case?

A. We might talk about it; I shouldn't wonder.

Q. Do you remember any special conversation you had with him about that time about that?

A. No, sir; I couldn't say for sure.

Q. Do you remember saying to him that you believed you could get a divorce from your wife, or words to that effect?

A. No, sir; nothing whatever. I had no reason to ask him that way.

Q. Did you ask him such a question as that?

A. No, sir.

Q. Did you understand Stryker was a lawyer at that time; did you know he was a lawyer?

A. No, sir.

Q. You didn't think he knew anything about the law, or did you?

A. He claims he did always; he always knows so much, you know.

546 Q. Did you ever consult him with reference to legal questions and law points?

A. No, sir.

Q. I will ask you if you said anything to him about Judge Powers, of this city, with reference to whether he could clear a man of murder or any crime if he had money enough—if he paid money enough?

A. We might talk about it at the time Montgomery was killed.

Q. Might have expressed such an opinion?

A. We generally got a paper and he would make some kind of remarks.

Q. I will ask if, in any of your conversations with Stryker in the saloon, you told him you wanted to get rid of your wife?

A. Not whatever; nothing.

Q. I will ask you if up to that time you and your wife ever had any serious difficulty?

A. No, sir; never.

Q. How had your wife treated you up to that time?

A. Like any lady could; she was a good-hearted little woman.

Q. Did you tell Stryker she was too good for you; you wanted a woman that would flirt with the men in the saloon?

A. No, sir; never.

Q. Would your wife come up to the saloon when Stryker was there? Did she come to the saloon evenings any time?

A. Yes, sir. Not every evening; she was there through the day; was always around there with me.

Q. Was she in the habit of coming up and coming in any time?

A. Yes, sir; every minute.

Q. I will ask you if you ever told Stryker at any time in any of those conversations you had with him in the saloon while he was there
547 last winter, that you wanted to get a woman that would flirt with the men.

A. No, sir; never.

Q. How long did George Wright work for you?

A. Only a few days and was gone one morning.

Q. Can you tell the circumstances of his quitting work there?

A. One morning I came up and the window was broken in and George Wright was gone.

Q. What window?

A. The back window in the saloon.

Q. The north window?

A. Yes, sir.

Q. He was gone?

A. Yes, sir.

Q. Did he ever come back?

A. No, sir; I hunted for him but never found him. He took the money that was in the drawer and a pair of spyglasses.

Q. That was gone also?

A. Yes, sir.

Q. Did you ever settle with him?

A. I never see him till I saw him in the county jail.

Q. Do you remember when he worked for you?

A. I think it was 1892.

Q. Do you remember Sunday evening, April 29th?

A. Yes, sir.

Q. Do you remember what occurred?

A. Yes, sir.

Q. In your family that evening?

A. Yes, sir.

Q. Tell the jury what, if anything, occurred between you and your wife that evening and how it happened.

A. We were down to the house, you know, reading the paper and in the evening we had supper, and soon after I went out and watered the lawn. We had lots of new trees planted, and my wife asked me where the German paper was and I said, Up to the saloon. We kept two or three German papers. She couldn't read English, and we had German
548 papers. She went up to the saloon and I watered my lawn and the flowers and trees I had planted there, and my wife came out to read the papers in the saloon awhile after, and the first thing I heard she screamed, you know, and I was behind the house, on the east side of the house, so I came around the house and she was fallen down on the lawn. I had a hose to water the lawn with—a kind of a coil—lying around there. I had a pipe leading from the brewery into the garden on

a tree, and on this tree I had a hose fastened to sprinkle over the lawn, you know, and the hose was laying somewhere in the middle of the fore part of the lawn. I stepped behind the house and pulled a little more hose or something and she stumbled over it and she hollered, and I run up and she was laying on the ground, and I picked her up and she said then to me that I did it for meanness; that I pulled on the hose just as she was stepping on it. I explained to her how I couldn't see her, as I was on the other side of the house and didn't see her coming out of the house, and we had a little dispute over it.

Q. That is what it started from?

A. Yes, sir.

Q. Did you have any loud talk?

A. No, sir; we didn't have any loud talk, but my wife hollered and I ran to her.

Q. Did you talk loud, so that people could hear you?

A. We might talk a little loud. She generally always talks loud.

Q. Didn't you talk loud?

A. I might have done so; yes, sir.

Q. Did you see anything of old man Lauenberger?

A. He was standing by his door. They were close together standing by the door.

549 Q. Did he say anything to you at that time that you remember?

A. Yes, sir; he and his wife invited us into their house.

Q. Did you go over?

A. Yes, we went over; I stopped watering.

Q. Tell what happened.

A. We all went in the house, you know. My wife sat down on the bed, and I did; she kept on talking that I played her—thought to be smart.

Q. Tell what you did.

A. She was talking about how she fell; that I had done a trick to her; that I was smart or doi g a trick on her; she told me in German.

Q. Did you talk in German to her?

A. Yes; always did around the house; so I say she had been drinking a little bit, you know. I noticed my wife had been drinking a little bit during the evening.

Q. What did you say or do?

A. I told her to get along down home and go to bed, and my little girl asked her two or three times, but she would not go, she was going to stay at Mrs. Lauenberger's.

Q. What did you do then?

A. Me and my wife talked, you know, and I would tell her to go down and she wouldn't come, so I went over to the saloon.

Q. Did you do anything to your wife before you left there?

A. I caught her by the shoulder, and we were both sitting by the bed, and I told her to go over to the house and go to bed, it was time.

Q. Did you slap her or strike her?

A. I put my hands on her shoulder.

Q. Tell all you did, whether you struck her or not.

A. Not to my recollection; I was a little mad that night because

550 she would not go to bed, and I might have slapped her.

Q. What did you do?
A. Me and Lauenberger went over to the saloon.
Q. Where did you leave your life?
A. She stayed there.
Q. Did you and Lauenberger both go together to the saloon?
A. Yes, sir.
Q. Did you invite him to go over there?
A. No, sir; not to my remembrance.
Q. What did you do when you got over to the saloon?
A. He called for a glass of beer.
Q. Did you give it to him?
A. Yes, sir.
Q. Where was Annie then?
A. She was sitting on my bed, or laying there.
Q. In the saloon?
A. Yes, sir.
Q. Was the saloon lighted up?
A. I think I had a small lamp behind my cot; that was Sunday night and it was not lighted up then.
Q. How did you go in, do you remember?
A. We generally had the west door open, you know, always.
Q. West door?
A. Yes, sir; by open, I mean not locked.
Q. Did you see your wife any more that night?
A. No, sir.
Q. Did you hear her any more that night?
A. I think she was rapping on the door, and would have come in; at the time I was half undressed, and I told her to go down to the house to bed.
Q. You told her to go to the house?
A. Yes, sir.
Q. Where did the little girl stay that night?
A. Slept with me.
551 Q. What time did you get up the next morning?
A. I always get up about nine o'clock, when the Germania bell rings, six o'clock in the morning.
Q. What time did you eat breakfast?
A. 8 o'clock.
Q. What time does the little girl get up?
A. At the same time I do.
Q. You have breakfast at eight o'clock?
A. Yes; perhaps a little after eight.
Q. Did you go down and wait for breakfast, or wait to be called?
A. The' always call me. I am generally around the brewery or in the saloon.
Q. When you went down to the house, do you remember whether you ate breakfast with your wife that morning?
A. Yes, sir.
Q. Anything said about the trouble of the previous night?
A. No, sir; we never spoke of it again.
Q. Were you and your wife friendly the next morning to each other?

A. Yes, sir.
Q. Do you remember what you did Monday?
A. Yes, sir.
Q. Where were you and what did you do Monday?
A. After I had my breakfast I went to the brewery, sacking some malt; I was going to brew the next morning, and while I came along the butcher came and asked if we wanted any meat.
Q. Did you get any meat that morning, do you know?
A. I don't remember, I think we had some chickens.
Q. How did you spend the day?
A. As I stated, I went and sacked some malt.
Q. Getting ready to brew?
A. Yes, sir; we were going to grind that day.
552 Q. Did you grind that day?
A. No, sir; I had my place leased out a year before, and the malt machine was over to the vinegar works, and I had to go over there and see if they had steam up.
Q. You went over to the vinegar factory?
A. Yes, sir.
Q. Do you know what time of day you went over there?
A. Between nine and ten o'clock.
Q. Where did you go then, or what did you do?
A. Just as I went home again my wife came to the brewery and asked me for a demijohn. We both went to the vinegar works, me and my wife.
Q. Do you remember what time of day that was?
A. The forenoon.
Q. What did you do?
A. I could grind the malt, they had the steam up.
Q. Did they have steam up?
A. No, sir; early next morning.
Q. You expected to get it down next day?
A. I had to have it done next morning.
Q. Then you came home, or where?
A. Me and my wife had a pig ranch there, three or four hundred pigs at a time at the vinegar works. Me and my wife bought a pig there.
Q. Then where did you go?
A. Then we went that way and called to old man Lauenberger to fetch a rope, to take the pig over to the brewery.
Q. Did you take the pig to the brewery?
A. Yes, sir.
Q. Did you help him, go with him?
A. Taking it over; yes, sir.
Q. From the vinegar factory to the brewery?
A. Yes, sir.
Q. Where did you put the pig?
A. In a stable; horse stable.
Q. In one of the old buildings on the hillside?
A. Yes.
553 Q. What did you do the rest of that day, do you remember?
A. I worked in the brewery. I had a pig over there, and I told the old man to help me, and he said he was going to chop wood first for

himself; his wife wanted wood, and in the afternoon we were going to start in and make a pig house.

Q. Did you?

A. Yes, sir; we started in in the afternoon.

Q. Where did you make that pigpen?

A. By the stable there.

Q. What direction is that from the house?

A. This is on the south side, and the road is on the north side, you might say.

Q. Did you make a pig pen?

A. Yes, sir.

Q. Put the pig in it?

A. Yes, sir; in the evening. He got away once in the afternoon some time, but we opened the stable and the pig was gone, and we found he was back to the vinegar works.

Q. You had to bring him home?

A. Yes, sir.

Q. You found him over there?

A. I went over first and noticed him there, and me and the old man went over and got him.

Q. Was your wife over there in the afternoon?

A. Not then.

Q. Did she at any time come over in the afternoon?

A. She was in the garden.

Q. Did she come over to the vinegar factory in the afternoon?

A. No, sir.

Q. She was over there in the morning?

A. No, sir.

Q. Did she come home with you in the morning?

A. Yes, sir; I carried the vinegar; I got two gallons of vinegar.

Q. You carried that over to the house?

A. Yes, sir.

Q. Monday evening after you got the pig, what time did you have supper?

A. Supper late.

554 Q. What were you doing that afternoon?

A. Putting up a pigpen, me and Lauenberger.

Q. And after that what did you do?

A. We had supper.

Q. Do you know what time you had supper?

A. Sometime after seven o'clock; my wife came up once, twice, or three times and asked if I was not going to eat supper, and I said I would like to get through with this first.

Q. Between seven and eight o'clock sometime?

A. Yes, sir.

Q. Were you at the saloon any in the afternoon?

A. Yes, sir; when anyone came and wanted anything I went over to the saloon and waited on them.

Q. Can you recall who was around the saloon in the afternoon?

A. Yes, sir.

Q. Who was there?

A. The man who I bought the pig from.

Q. Anybody else?

A. Mr. Sjoblom; he was there in the afternoon and brought some groceries.

Q. Who else?

A. There was a lady and a gentleman there—several ladies there; I don't remember the names, but I know them when I see them.

Q. Where did you go after you ate your supper, if you remember?

A. I went back to the saloon.

Q. Who went with you, if anybody?

A. My wife and Mr. Pearson.

Q. Who else was there, if anyone, when you went up to the saloon at that time?

A. Two sisters of mine and a brother-in-law.

Q. Who was it?

A. Mr. Smith.

Q. Mr. and Mrs. Smith and Mr. and Mrs. Pearson?

A. Yes, sir.

Q. What did you do?

555 A. We shook hands and spoke to each other outside; and I told about the pig, and we went and looked at it; and they said I looked like a workingman, and I said, I bought a pig to-day.

Q. What did you do in the saloon, if anything?

A. We all went into the saloon then.

Q. Drink anything?

A. Yes, sir; we all drank.

Q. Do you remember anybody else coming around the saloon that evening?

A. Yes, sir.

Q. Who else came that you can remember?

A. I don't know.

Q. Just those you can remember.

A. I don't know their names; fellows from the industrial army came and some other boys and the last party that was there was Mrs. Blom and her husband.

Q. I will ask you if Mrs. Lilly Birch was there?

A. She was not inside of the saloon; she was outside; lots of people outside.

Q. Was anyone with her?

A. Another lady.

Q. What happened there at that time?

A. I was working outside doing some chores and my wife was along with me there and these two ladies came along and shook hands and spoke, and I think I was fixing up the lamps or something, and she said, Charley, fix a glass of wine; so I fixed a couple of glasses of wine and carried them out.

Q. You say you think Blom and his wife were the last ones there up to that time?

A. Yes, sir.

Q. Then what did you do?

A. After dinner?

Q. After they went away, about what time was Blom and his wife there?

A. Between 9 and 10; a little after 9 o'clock.

556 Q. What did you do then?

A. I lay down behind the counter on a bed; behind the lunch counter.

Q. In the saloon?

A. Yes, sir.

Q. Was your wife there?

A. Yes, sir.

Q. What did you do?

A. I was reading the paper to her about the industrial army.

Q. Talking about the industrial army to her?

A. Yes, sir.

Q. I will ask you now if at any time during that evening your wife said anything to you about going up to the industrial army?

A. Yes, sir.

Q. Did she express any desire to see them?

Judge HOWAT. Let him ask him what his wife said.

Q. You say you and your wife talked about the industrial army?

A. Yes, sir.

Q. And she expressed some desire to see them?

A. Yes, sir.

Q. Did you go up to the industrial army?

A. No, sir.

Q. Do you know whether she did or not?

A. I cannot say.

Q. Did you see her start to go?

A. No, sir; I didn't.

Q. Or anyone start to go with her that you know of?

A. No, sir; not that I know of.

Q. What transpired while you were reading; where was your wife?

A. At the end of my cot. Then she said good night and left. She said, I go down to the house to go to bed.

Q. Then what did you do?

A. Then I lay there on the lounge.

Q. Then what?

A. Dropped asleep.

Q. You went to sleep?

A. Yes, sir.

Q. When were you awakened?

A. I was awakened by two men.

557 Q. How long after that?

A. Couple of hours after that.

Q. How were you awakened?

A. They came behind the counter and got me out of bed.

Q. Do you know who they were?

A. Yes, sir.

Q. Who?

A. Two men in court to-day.

Q. Do you remember the names?

A. I think Johnson——
Q. Have you ever seen them before?
A. Lots of times.
Q. Did you know their names at that time?
A. No, sir; I think Johnson was here this morning.
Q. What did they come there for?
A. They got me out and came behind the counter.
Q. What did they come there for?
A. To get drinks.
Q. What did they get?
A. Two glasses of whiskey and a bottle of whiskey.
Q. Two glasses of whiskey?
A. Yes, sir.
Q. Whiskey or beer?
A. I couldn't tell for sure if it was whiskey; I think it was whiskey; whiskey or beer, I am not sure.
Q. Was the saloon lighted?
A. Yes, sir.
Q. How long did they stay there?
A. Not very long; ten or fifteen minutes.
Q. Anything said about playing pool?
A. They were talking after they had their drinks, but I could not tell what the' said, and finally they asked me to get them a bottle of whiskey. When I got them the whiskey—I couldn't say who paid for it, the same one that paid for the drinks—they were standing in the middle
558 of the room talking again to themselves, and they might have said something about playing pool, but I don't remember whether they did or not.
Q. Can you tell about what time it was when they went away?
A. Half past twelve.
Q. It was that late, was it?
A. It was, as they came in and got me out, by my clock that was there.
Q. Does your clock keep correct time?
A. It was a little slow that day. At twelve o'clock at noon I noticed my clock was a little slow; the bell rang before my clock was at twelve.
Q. They didn't play pool?
A. No, sir.
Q. Then went away?
A. Yes, sir.
Q. What did you do after they went away?
A. As they were talking by themselves, I was standing behind the counter.
Q. Sitting or standing?
A. Standing.
Q. Were you behind the bar?
A. Yes, sir.
Q. When they went out what did you do?
A. I was standing here, and they were standing 'here talking by themselves, and I thought they were going out and I opened this door, and I wanted to go out to urinate.
Q. Did they go out before you did?

A. No, sir; they didn't go; they were talking awhile so I steepped behind the counter; I thought perhaps they would want something more to drink.

Q. Then when they went out, what did you do?

A. When they went out I went out to urinate.

Q. What did you do then?

A. The first thing I saw was that there was a light in the house and the blinds were drawn up.

559 Q. What did you do?

A. The blinds and shutters were up in my wife's bedroom.

Q. What did you do then?

A. I went down to the house and thought it was something strange; and as soon as my wife goes to bed she fixes the shutters and curtains down as soon as she lights the lamps.

Q. What did you do and where did you go?

A. I went down to the house and looked into my wife's bedroom window where the light was burning, and saw a hat and shawl laying on the table, and the bed was not disturbed at all; it was just the same as it was at supper time, and so I went around to the window that faces the east. I went around to the bedroom door and knocked, but she was not in, and I looked in the kitchen door. The door between the bedroom and kitchen was open and the light shined into the kitchen, too, and she was not in there, and I went around to the hall way door and knocked, and it was locked.

Q. Point on the plat what windows you went to.

Q. Did you go through that gate?

A. Yes, sir.

Q. What window did you see a light in?

A. The bedroom window.

Q. Which window did you see a light in?

A. Southeast corner.

Q. What door did you go to first?

A. The bedroom door.

Q. You looked in?

A. I went around here.

Q. To the hall door?

A. Yes, sir.

Q. Did you try to open that door on the north?

A. Yes, sir.

Q. State whether it was locked or not.

A. Locked.

Q. Did you try that door and couldn't open it?

A. Yes, sir.

Q. Was that door locked?

A. Yes, sir.

560 Q. Where did you go from there?

A. I went to the parlor door.

Q. Next the street?

A. The door facing south.

Q. What did you do there?

A. I thought she might have gone into the parlor and dropped to sleep there.

Q. What did you do when you came to the parlor door?

A. I rapped on the door and she was not there.

Q. Then where did you go?

A. Then I went out the gate and called her by name, and wondered where she was.

Q. What did you do; which way did you go?

A. I went out on the road that goes toward the brewery and saloon. [Witness indicates on the plat where he went.] I stood and looked toward Burgatown.

Q. Did you have any reason to expect your wife would be at Burgatown?

A. Yes, sir.

Q. What was it?

A. A man named Gilbert came that evening, and as we were eating supper my wife said Gilbert's sister would be in a family way pretty soon.

Q. Where did they live?

A. Burgatown.

Q. How near the county road?

A. The third house.

Q. Which side of the street?

A. Left side.

Q. As you go east it would be on the north side?

A. Yes, sir.

Q. As you looked in that direction, could you see that house?

A. It was dark.

Q. Could you see any light in that direction?

A. No, sir.

Q. Tell what you did next.

A. As I was standing there looking toward the house by the
561 creek—there was a creek, you know—I see something lying there.

Q. Whereabouts?

A. (Witness indicates.)

Q. What did you do?

A. I walked up to it.

Q. What did you do or say?

A. I couldn't see, first; I was standing here where it was before I came to the lights—two lights burning right here—by the pool table is two big lights three or four feet from the window.

Q. What did you do or say?

A. I don't say anything; I walk up there and see something laying there, and I went closer, and I see it was my wife.

Q. Could you tell it was your wife?

A. As soon as I came up to it.

Q. What did you do?

A. Then I hollered and said, Hello, Mary, what is the matter? and I took hold of her and was going to pick her up.

Q. How was she lying?

A. Face to the ground, toward the window.

Q. You picked her up?

A. Yes, sir.

Q. Do you remember what you did?

A. I took hold of her and picked her up, and as soon as I picked her up I see her face was covered with blood, and I looked at her and saw her throat was cut, and that scared me so I laid her down again, as soon as I see that.

Q. Then what did you do?

A. I ran over to old man Lauenberger's and got him up. He lives right close.

Q. What did you do?

A. Knocked on the door and told him my wife was killed, and
562 he got scared and put his pants on, and we ran back again and I caught hold of her and lifted her up again, and had her in a sitting position; me and old man Lauenberger looked at her, and I told him to take hold of her feet and we would carry her into the saloon.

Q. Did you do that then?

A. No, sir; the old man said we had better run for a doctor. About that time I was so overwhelmed and afraid it was the same as if my own throat was cut, and I dropped her again and we went over to the doctor's.

Q. Where did you go when you found your wife?

A. Into the saloon to get a coat, you know I had no coat on.

Q. Did you have a hat on?

A. No, sir.

Q. Where was your hat?

A. In the saloon.

Q. Where was your coat?

A. I couldn't find the coat; it was down at the house.

Q. Did you get a coat?

A. Yes, sir.

Q. Down to the house?

A. Yes, sir.

Q. Who went with you?

A. Lauenberger.

Q. To get the coat?

A. Yes, sir.

Q. When you got the coat and started back, state where you went from there. Did you go into the saloon then?

A. We went there and closed the doors.

Q. Did you go into the saloon when you came back from the house after you got your coat?

A. I am not sure.

Q. Do you remember what you did in the saloon?

A. I looked after my hat.

Q. Do you remember washing your hands, or anything of that kind?

A. Yes, sir; as soon as I laid the body down we went into the saloon.

563 Q. The first time you washed your hands?

A. I came into the saloon.

Q. Where did you wash your hands?

A. Behind the bar.

Q. What place is there there for washing hands?

A. There is a water faucet there behind the bar.

Q. Is there any other place in the saloon you can draw water from?

A. I just had this put in a couple of weeks before; didn't have it there before.

Q. Then where did you go after you got your coat and hat?

A. We went for the doctor.

Q. Which way did you go?

A. Through Burgatown.

Q. When you got through Burgatown, give a general idea of the route from there over to the doctor's office. Is there a road clear over to the doctor's office?

A. No, sir; only a little road we call in Burgatown west.

Q. Where did you go from that?

A. It goes up to the D. & R. G. track.

Q. Then which way?

A. U. P. track to the smelter, what they call the dump, and it goes right behind the smelter there, and then the regular road.

Q. Did you meet anyone when you were going over there?

A. I saw two men.

Q. Where were they?

A. Right on the track.

Q. Which way were they going?

A. Toward Salt Lake City.

Q. When you got to the doctor's office what did you do there?

A. Rapped on the door.

Q. Anything else; anybody answer you?

A. He had a young boy there, a kind of clerk, a young man.

564 Q. Did you get the doctor out?

A. I knocked on the door and this young man came—a boy of about 16 or 17, I should judge—and he opened the door and knew me. I asked where the doctor was, and he said in bed asleep, and I asked where he slept. I went right in to the doctor.

Q. Did you get the doctor up?

A. Yes, sir.

Q. What did you tell the doctor?

A. I told him my wife's throat was cut.

Q. What did he say to you?

A. He was kind of sleepy, you know, and didn't understand me or recognize me at first, and didn't seem to want to get up, and I pulled his bedding off and told him he must hurry up and come quick, and he told me to get out—to get out of his place.

Q. When he got up, where did you and the doctor go?

A. He didn't get up in my presence; he told me to get out of his place.

Q. Did you get out?

A. Yes, sir; and went to the telephone.

Q. Had you talked about the telephone before you went out?

A. Not that I remember; we might have.

Q. You went to the telephone?

A. Yes, sir.

Q. Which place did you go?

A. Public telephone, Saunders, right across the street there.
Q. Did you succeed in getting in?
A. No, sir.
Q. Then where did you go?
A. Went back to the doctor's; before I went back I knew Harry Haynes had a private telephone, but I didn't know exactly where it was, so I rapped on some doors to get Harry Haynes up.
565 Q. Where did you next see the doctor?
A. When I came back the doctor was dressed and had his satchel and put his tools in.
Q. Did the old man go with you all the way over to the doctor's office?
A. He went along with me all the way; I run ahead and he was behind me.
Q. You saw him there at the doctor's, did you?
A. Yes, sir.
Q. When you went to the telephone office did Lauenberger go with you?
A. He stayed by the doctor.
Q. When you were around Harry Haynes' store, where did you see the doctor next?
A. The doctor was getting dressed and ready to come out; he had kind of a satchel with his tools in it.
Q. Did you go back up to his place?
A. Yes, sir.
Q. Then what?
A. I told the doctor I couldn't reach the telephone, and he said he would get Harry Haynes' clerk up.
Q. Did you stop there?
A. He told me Harry Haynes' clerk was sleeping in the store.
Q. What was done?
A. We got him up finally.
Q. Did the doctor go in there, too?
A. He stepped inside of the door, I guess; I am not sure; he didn't remain long; he told me he could go ahead and I could talk to Ahlberg.
Q. You stayed at Harry Haynes' store?
A. Yes, sir.
Q. What did you do there?
A. He lit a lamp and put on his pants and telephoned.
Q. Did you succeed in getting any telephone message?
A. No, sir; there was something broke or wrong.
566 Q. Did you telephone to anybody?
A. He said he couldn't get a telephone. He went in his room and said there was something wrong with the telephone.
Q. Who was he trying to telephone for?
A. The sheriff and my relations.
Q. What relations?
A. My sisters and brothers-in-law.
Q. At what place?
A. Sandy.
Q. After you failed to get a telephone message where did you go?
A. Back home.
Q. Which way did you go back?

A. The regular road.
Q. Didn't go the way you come over there?
A. No, sir; we went right down.
Q. Around by the smelters?
A. Yes, sir.
Q. Did you meet anyone going over as you went back?
A. A man.
Q. Where did you meet him?
A. That I couldn't tell, I was so overwhelmed.
Q. Did you speak to him?
A. He spoke to me first; I spoke to him.
Q. What did he say?
A. He asked me if I knew where a saloon was.
Q. What did you tell him?
A. I told him I was going to a saloon.
Q. Anything else; was that all that was said?
A. That's all.
Q. Did you say anything else to him?
A. No, sir.
Q. You kept on walking, then, did you?
A. Yes, sir.
Q. What did he do?
A. He must have come behind me, for as soon as I was at the saloon he was there, too; this man.
567 Q. When you got to the saloon he was there?
A. Yes, sir.
Q. Did he get there ahead of you?
A. I was running all the time; I didn't know he was behind me.
Q. When you got there he came there pretty soon afterwards, do you mean?
A. Yes, sir.
Q. What, if anything, did you do or say in reference to him?
A. I never had any talk. As soon as he came in the doctor was already there inside of the saloon, and old man Lauenberger. As soon as I came inside this man came in and he said, I would like to get a bottle of whiskey, and asked who was the proprietor or bartender; and I stepped behind the bar, you know, and he looked at me, and I took a good look at him; he was a stranger, and I sold him a bottle of whiskey and he paid me and went out.
Q. When you got over there where was the doctor and the old man?
A. In the saloon.
Q. What was done?
A. We took a lamp to go out to the body. We stepped outside and the light blew out.
Q. What door did you go out of?
A. South door.
Q. Then what occurred?
A. The old man went to get a lantern. I don't know where he went; I was excited and crying and overwhelmed. Finally he came in and said he couldn't find any lantern, and I told him there must be one in the stable; and the doctor asked me if there was any lantern around the

place, and I said yes, there must be two or three around the place. Some way or other we went over to the brewery to hunt a lantern.

Q. Who did?

A. All three, I guess—me and the doctor and old man Lauenberger.

568 Q. Did you go?

A. Yes, sir.

Q. Who found the lantern?

A. I went and opened the brewery and found a lantern on the wall.

Q. You got the lantern?

A. Yes, sir.

Q. Who lit the lantern?

A. We had to put a wick and some oil in it first; we fixed it up first, you known, and then went to the body.

Q. Did you hold the lantern?

A. Yes, sir.

Q. Then what was done with the body?

A. We took a good look at her, and looked around for a knife, if we could find anything, and then we went into the saloon and put oilcloth on the pool table. The doctor thought it was the nearest place to take her into the saloon instead of taking her down to the house, and we put oil cloth on the pool table so that the blood would not go through the cloth.

Q. Then what?

A. Then we went out again, all three of us.

Q. What was done?

A. We took the body inside.

Q. Who did?

A. The doctor and Lauenberger.

Q. Put it on the pool table?

A. Yes, sir.

Q. The body of your wife?

A. Yes, sir.

Q. Did you go into the saloon then?

A. Yes, sir.

Q. What did the doctor do with the body after that?

A. He examined her.

Q. Then what?

A. Then we were talking in there, and he asked how it occurred, and one thing and another.

Q. You had a good deal of talk from then till daylight, did you?

A. Yes, sir.

569 Q. Was the brewery locked when you went to get the lantern?

A. Always locked in the evening.

Q. Did you hear Mr. Lauenberger's testimony the last time he testified, in reference to your taking a candle before you went over to the doctor's, lighting a candle, and going outside of the saloon and holding the candle along looking at the side of the saloon?

A. Yes, sir.

Q. State whether you did anything of that kind or not.

A. Not at that time. We didn't do anything when we found the body; we were both so scared we wanted to run for a doctor.

Q. Did you do that?

A. No, sir; not whatever.

Q. Did you have any candles in the saloon?

A. No, sir.

Q. You heard the testimony of several witnesses, including Dr. Farrabee, that you sometime during that morning made a statement that when you first found your wife's body she said, "Oh, Charley!" Did you make any such statement?

A. I told the doctor, you know, as I got hold of her and turned her over it sounded to me something like Oh, Charley!

Q. Was there any such noise when you took her up? Did she say, Oh, Charley?

A. I was so excited—something—it was some noise, very low. I didn't know what it was.

Q. You say she was lying on her face, and you picked her up and turned her over?

A. Yes, sir.

Q. The first time you said you picked her up and turned her over?

A. Yes, sir.

Q. State now, to settle all dispute, what you did with the body when you first found it.

570 A. I picked her up and turned her over, laid her on her back.

Q. She was laying on her face?

A. Yes, sir.

Q. And you told these parties that she spoke or said, as you understood it, Oh, Charley?

A. Which parties? I only spoke to the doctor; me and the doctor was alone in the place.

Q. You told the doctor that?

A. Yes, sir; I did.

Q. I will ask you if, while you and the doctor were there with your wife's body, if anyone came before daylight.

A. No, sir; me and the doctor was alone together.

Q. I will ask you whether or not anyone was sent for.

A. Yes.

Q. Who came first after you and the doctor got there?

A. Weiler and Albert Cahoon.

Q. About what time did they come?

A. About five or six o'clock.

Q. Was it daylight?

A. I can't tell exactly. It was daylight.

Q. You could see?

A. I saw them come.

Q. While you were there, did you go out of the saloon?

A. Yes; me and the doctor went out two or three times.

Q. Did you go any distance away from the saloon?

A. I did just before Albert Cahoon and Henry Weiler came.

Q. Where did you go?

A. Down to the house.

Q. Did you go into the house?

A. I went in the hallway.

Q. How did you get in?

A. The doctor gave me the key.

Q. Do you know where he got the key?

A. He found it as soon as we removed the body on the table, and he examined her pockets and found a handkerchief and a key to the house.

Q. Did you ask him for the key when you went to the house?

A. Yes, sir.

571 Q. How long did you stay down at the house?

A. I didn't go in; I went in the hallway.

Q. What did you go there for?

A. It was my impression first that she killed herself and I said, Let's go down and see if we can find a note in the house.

Q. Did the doctor come down with you?

A. No, sir; he stayed in the west door. I asked him four or five times, but he said, I had better remain here.

Q. You didn't stop long at the house?

A. I didn't go in, I said. As soon as I stepped inside of the hallway there was something to me said, Don't go in, and I walked up to the doctor again; the doctor was standing in this door all the time.

Q. When you first went to the house with the old man, after you have found the body, how did you get in the house. You say you went for a coat.

A. Me and the old man tried to raise a window, and we got it up and I went in the window.

Q. Did he?

A. No, sir; he stayed right by the window.

Q. Outside?

A. Yes, sir.

Q. That is when you got your coat?

A. Yes, sir.

Q. How long did you stay in the house then?

A. Just jumped in and got a coat.

Q. And come right back?

A. Yes, sir.

Q. Did you put the window down again?

A. That I couldn't tell; I was so scared and overwhelmed that I don't know, but I think that he did.

Q. You heard some evidence about some blood stains found on the side of the brewery and inside of the brewery?

A. Yes, sir.

572 Q. Do you recognize that stick of timber?

A. It is hard to recognize a piece of timber like this after I have been away so long.

Q. You heard the evidence of Robert Kizer?

A. Yes, sir.

Q. That that piece of timber was cut out of the door frame that went from the main entrance of the main brewery. How do you get into the brewery from that street?

A. There are two big double doors there.

Q. What is that room called when you go into that?
A. It is called a washhouse.
Q. As you go in there is a room and a door to the right. What is that room called?
A. That is the store room, or, in German, bierkaller.
Q. Which way does that door open that goes in there?
A. Outward.
Q. Which way do the front doors of the brewery open?
A. Inside.
Q. After you go into the main room of the brewery you turn to the right. How many doors are there, double or single?
A. Double doors, two.
Q. They both open outward into the big room?
A. Yes, sir.
Q. And the outside doors open inward?
A. Yes, sir.
Q. So that the two doors come together?
A. Yes, sir.
Q. You heard Robert Kizer's testimony about this piece of timber being taken off the door frame of the inside doors?
A. Yes, sir.
Q. What kind of a door frame is it?
A. Kind of a broad door frame.
573 Q. Do you recollect anything about that piece of timber after I describe where it was got from?
A. Yes, sir.
Q. That spot there was four feet three inches from the floor?
A. That was cut off.
Q. Now, then, that nail was driven in there?
A. Yes, sir.
Q. You have seen that place before?
A. Yes, sir; nearly every day.
Q. Do you know any way to account for that stain on that piece of timber?
A. I think I have. We used always to hang meat or game there if I had any, because it was a cool place, and in before that is the ice house. We used always to hang meat, or chickens, or rabbits, or anything like that there.
Q. Do you remember of hanging up anything on that nail shortly before your wife was murdered?
A. Yes, sir; two rabbits.
Q. When did you hang them up there?
A. Last week before that.
Q. How long before?
A. It might be Thursday or Friday; we had rabbits for Sunday dinner.
Q. Where did you get the rabbits?
A. We had some around the house.
Q. Wild rabbits?
A. They were wild and tame ones around.
Q. What they call tame rabbits, not jack rabbits?

A. Plenty of jack rabbits around my place, too.
Q. What kind were these you killed?
A. Tame ones.
Q. Where did you kill them?
A. Right by the brewery; always killed chickens or anything like that by the brewery; the tools are there in the storeroom.
Q. Did you ever hang anything else up there that you remember of, by the way of meat?
574 A. We always hang our meat in there in the storeroom.
Q. Do you remember putting any liver in there at any time?
A. Yes, sir; the same place.
Q. You heard the evidence in regard to some blood stains on the front door of the saloon?
A. Yes, sir.
Q. Do you know anything about how they got there?
A. No, sir.
Q. You can not account for them?
A. No, sir.
Q. You heard something about there being some small stains on the side of the saloon, can you tell about them?
A. No, sir; I couldn't see any and I couldn't see how they came there.
Q. Was your attention called to those stains before you were taken away from there on Tuesday morning?
A. I was taken away Monday morning. No, I am mistaken, Tuesday is right. Not while me and the doctor was there.
Q. Were you asked anything about it, while you were down there, by anybody?
A. No, sir.
Q. Of course, you don't know anything about how they got there?
A. No, sir.
Q. There was some evidence here about the oil cloth on the lunch counter having some stains on it, do you know anything about that?
A. No, sir; without my wife laid on it; we put my wife on some oil cloth.
Q. They didn't take that oil cloth off there?
A. I didn't know what they took.
Q. Who fixed the place up to put your wife on?
A. The doctor did most of it, I was so excited.
Q. Was Lauenberger there?
A. No, sir; he was hunting for a lantern.
575 Q. Was he around there any length of time after you brought the body in?
A. No, sir.
Q. Wasn't he out of the saloon?
A. No, sir; he was not there; he went over to his wife.
Q. Didn't he come back?
A. We called him back. I went over and called him to send him with note over to the State road.
Q. Your clothes that you wore at that time were introduced in evidence, shoes, coat, pants, vest, handkerchief, shirt, undershirt, and drawers. Those were all the clothes you had on?

A. I couldn't say from where I was sitting; they might have been.

Q. Did they generally look like your clothes?

A. The pants and coat I know were mine, but I couldn't see the undershirt from where I was sitting. I see them laying here, but I couldn't tell.

Q. Can you tell what kind of clothes you had on that night?

A. Pants and white vest and white shirt, drawers and undershirt.

Q. How did you wear your white shirt with reference to the sleeves being rolled up or not?

A. I had them rolled up all day at the ends.

Q. Both of them?

A. I think so; yes, sir.

Q. You had common shoes did you?

A. Yes, sir; same kind as these.

Q. Could you see those shoes to tell whether they were yours or not?

A. When I see them I can.

576 Q. They looked like your shoes in a general way?

A. I cannot tell whether those shoes were mine or not.

Q. They had the appearance of your shoes?

A. Looked something like mine.

Q. They were the clothes you had on that afternoon and night?

A. Yes, sir.

Q. They are the clothes you had on when you found your wife's body?

A. Yes, sir.

Q. If they are your clothes as introduced in evidence as the clothes taken off you they are the clothes you had on when you found your wife's body?

A. Yes, sir.

Q. Excepting you didn't have your coat on when you found your wife?

A. Yes, sir; I got the coat afterwards.

Q. You say you called the old man over there, for what purpose?

A. I sent him over to Weiler's with a note.

Q. Who wrote the note?

A. Dr. Farrabee.

Q. Did the doctor read you the note?

A. He handed it to me and I read it.

Q. What did you say?

A. I told the old man.

Q. What did you say to the doctor?

A. This was a couple of hours afterwards.

Q. What did you say in reference to the note after you read the note?

The COURT. Was this note introduced in evidence?

Judge CHERRY. Yes, sir; I suppose it is the same note.

Q. What, if anything, did you say in regard to the note to the doctor?

A. I said it was all right.

577 Q. There was something in there about telephoning to the sheriff?

A. Yes, sir.

Q. You read that?

A. I told him to put that down.

Q. What time did the sheriff get there?
A. About six o'clock.
Q. Where were you when you first saw him?
A. Standing by the front door.
Q. Did you see him coming?
A. Yes, sir; he came down the hill.
Q. From the east?
A. From the south.
Q. And then turned west to go into your place?
A. Yes, sir; turned west, that is right.
Q. When you saw him what did you do?
A. I said, now Will is coming.
Q. Who was that?
A. Will McQueen.
Q. Where did you go from the south door?
A. Behind the bar.
Q. After you saw the sheriff at the south door where did you see him next time?
A. Coming right in there.
Q. Where were you when he came in; where were you standing?
A. I was right here by the corner as I saw him come down the hill, I was kind of glad he was there, and I said, Will is coming, and I will go and take a drink, and I went behind the bar and took a drink, and I just got through when the sheriff came in.
Q. Did the sheriff come right to the door?
A. Yes, sir.
Q. Anybody else come in?
A. Montgomery.
Q. What was said; what was the first word spoken?
A. He came right up to me, the sheriff did, he was the first one that came in. He said, What is the matter, Charley, and I said, They killed
578 my wife. He said, It looks like it, you son of a bitch you killed your wife. I looked at him and I said, What is the matter, Will, you must be crazy or drunk, and he said, I am not crazy or drunk either, you son of a bitch, you are drunk; he said, Your eyes tell you killed this woman. He said, You killed that pretty little woman, and I said again, You must be sure crazy. Then he caught hold of me and knocked me down.
Q. Did he knock you down right there?
A. Yes, sir.
Q. Pushed you down, did he?
A. Then I was so excited, and overwhelmed, and angry, I couldn't tell exactly how it happened after he told me; I killed my own wife, any man in my circumstances having a wife, and finding her dead, and then he coming and accusing me; I can't tell how it happened, how he knocked me down.
Q. You say you were angry?
A. Yes, sir.
Q. Who were you angry at?
A. I say I was overwhelmed, you know, and I feel so bad, I can't explain it—no man can unless he has been through the experience; I can not explain

how I felt that night. I was so overwhelmed the same as if my own throat was cut when I found my wife under those circumstances.

Q. Did you hear McQueen's testimony on that point?

A. Yes, sir.

Q. He testified you told him you killed your wife? Did you tell him so?

A. No, sir; I did not.

Q. You told him just what you have now told the jury?

A. Yes.

Q. Is that all you told him?

A. Yes, sir.

Q. What was done after that?

A. He said, I put you under arrest. I said, That's all right, Will; by that time Montgomery was standing there, and he asked him if he had an iron.

579 Q. Handcuffs?

A. Yes, sir, and Montgomery said he had not. He said there are some pieces of rope around there, and I said there is some hanging in the brewery. I have lots of rope over here and we went and got the rope.

Q. Who?

A. Me and the sheriff and Montgomery, all three of us went and got the rope to tie me.

Q. Were you tied?

A. Yes, sir; tied.

Q. After you were tied what was said or done to you?

A. Yes, sir. Sheriff McQueen was going to show me where I killed my wife and where the struggle occurred. He said he had seen it coming down the hill, so he took me outside and showed me the ground was kind of torn up; and blood all in a circle around there. He said, There is where you killed her, you son of a bitch; there is where you killed that woman, and there is where she ran away from you and toward the saloon, and there is where she dropped down here; there was a big pool of blood. I said I don't know anything about it; I don't know who did it, and I said two men got me out of bed, and I told him how I found her, and he wanted to know who those two men were. He would not believe me, and I begged him to come along with me and find the two men. I said I knew the men for years, but I couldn't mention their names, but I knew where they lived in Burgatown; there were only two boarding-houses in Burgatown, only about a dozen or eighteen houses there, and I begged McQueen to go and see if we could find those two men. He said, All right, come along with me, and we went about one hundred yards toward

580 Burgatown, and he said, You son of a bitch this is a put up job, you come back; and I said, There is only four houses—it was between six and seven o'clock—they are eating breakfast, the bell has rung long ago, and the boys go to work at 7 o'clock, and eat between six and seven, we can go in or go to the next house; I don't know exactly the house but we can step in there, and he caught hold of me and marched me back to the brewery.

Q. You didn't see those two men, then?

A. Not then.

Q. Did you and the sheriff see them any time that morning to talk to them?

A. The sheriff was gone; he went to Harry Haynes' saloon.

Q. Who took you up to Salt Lake City?

A. Montgomery was along with me all the time down to the place and Albert Cahoon came, and I said there is no use of your keeping me here, when you have me arrested you have got to take me to Salt Lake City.

Q. In whose custody were you when McQueen left and before you went to Murray?

A. Montgomer's.

Q. Anybody else?

A. Albert Cahoon was there, too.

Q. I will ask you if you said anything that morning about going down to the house?

A. I begged them all, the time they knocked me down and told me to shut up.

Q. Did they knock you down more than once?

A. He slapped and hit me three or four times.

Q. Where was that?

A. Outside by the brewery place that goes upstairs, they set me there.

Q. Anything besides slap you?

A. He put me on the steps there and I begged him to go down to the house.

Q. You heard McQueen's testimony?

A. Yes, sir.

581 Q. He testified he kicked you; is that true?

A. Yes, sir; that is true.

Q. I will ask you after he showed you around the corner of the house where the pool of blood was if he said anything to you there about confessing; just state what he said about confessing, about asking you to confess.

A. He told me that all the time, as soon as he came into the saloon, and I told him how I found my wife and he said, You are the son of a bitch done it, and you had better confess just now. God damn it, I will fix you or shoot you, and he slapped me then and there, you know. I said he must be crazy or drunk; that an officer wouldn't do that after a man waits for him all night, and he comes down and jumps right on a man, and I said, Will, I lost my wife and she is dead, and now you come and say, You are a murderer, you son of a bitch; you killed that pretty little woman; and he said, I see in your eyes, you son of a bitch, you did it, and he hit me again and said, You son of a bitch, and all the time he was talking to me that way, and I begged him and said, Let's go and see if we can find any evidence; Let's go to the house.

Q. Did he go to the house?

A. None of them; I begged them all three. They never went down to the house, any of them.

Q. I will ask you where little Annie was that Monday night, if you know?

A. She was with her school-ma'am.

Q. She wasn't there?

A. No, sir.

Q. You supposed she went to the school marm; you didn't see her?

A. No, sir.

Q. She didn't come home from school at the usual time?

A. No.

582 Q. Was there anything said in the family that morning about her going to school?

A. Yes, sir.

Q. State what occurred about the little girl going home with the school marm.

A. That was Sunday; she was in the habit of going on Sunday to the school marm, and my wife and little girl went over to visit, and in the evening the school marm——

Q. I want to know what happened Monday morning.

A. My wife called me to breakfast, and as she was setting out the table Annie came to me and put her arm around my shoulder and asked me if I would let her go to-day; that mamma had her clothes fixed and would I let her go to-day.

Q. State what was said and done.

A. I told her no, the same as I did the Sunday before, and then my wife started to explain that she had made arrangements with the school marm, and she was going to teach her music and painting, and Annie kept asking me and kissing me, and finally I said, I don't care; if you have made any arrangements I don't care if she goes or not. Then I let her go.

Q. Tell the jury how your wife treated you and the little girl while you lived together.

Judge HOWAT. He has testified to that.

The COURT. That is right.

Q. Was that the case up to the time that she was killed?

A. Yes, sir; she was as good and honest a little woman as ever I saw; as good and honest a little woman as ever stepped on American soil.

583 Cross-examination by Judge HOWAT:

Q. How old was your wife when you married her?

A. Same age as me; 23.

Q. How long had you known her?

A. From childhood.

Q. Father and mother living, either one of them?

A. No, sir.

Q. Neither one?

A. Her mother was living, but I think I heard since I have been in jail that she died.

Q. She died since your wife was killed?

A. Yes, sir; that is what I heard.

Q. After you were in jail you heard your wife's mother died?

A. Yes, sir.

Q. How old was she?

A. About eighty or something over eighty.

Q. Was your wife well educated?

A. About the same as me, I guess.

Q. She could read well?

A. She could read and write; yes, sir.

Q. Was her father living when you married her?

A. Her father died in 1864.

Q. You have lived with her right along, happily and peaceably and pleasantly, up to the time she was killed?

A. I did.

Q. Excepting that little dispute you had Sunday night you never had any trouble in the world, did you?

A. We might have little disputes sometimes.

Q. You never struck her?

A. No, sir.

Q. She always treated you kindly and honestly?

A. She did; yes, sir.

Q. And you were always good to her?

A. Yes, sir.

584 Q. Will you tell the jury how it occurred to you that she had committed suicide when you had been living happily together up to that time; why it was you thought she had committed suicide?

A. I find the body near to my saloon and never heard nothing but the two men, getting out of bed; that is the first I knew, and I was sleeping right in the saloon and didn't hear nothing.

Q. That is the only reason?

A. Yes, sir.

Q. Didn't Lauenberger, when you said that, look after a knife and say she hadn't committed suicide, there was no knife there? Didn't he tell you that before you went for the doctor?

A. We both looked for a knife; but Lauenberger never said anything, though.

Q. Didn't Lauenberger say it was not suicide?

A. No, sir.

Q. When you came back and saw the remains there, and talked to the doctor about suicide, didn't he say it was impossible?

A. That is right; yes, sir.

Q. How did it come you asked the doctor afterwards to go down to the house and see if she left you a note; that you thought she had committed suicide? After the doctor told you it was not possible, how was it you say you asked the doctor to come down to the house with you to see if your wife left a note, because you thought she committed suicide? Tell how that was.

A. I couldn't tell how it was; I wanted to find out; I was so excited, as any man would. I couldn't possibly tell what I wanted to go down to the house for, as any man in my circumstance, I was so excited.

585 Q. Hadn't the doctor told you it was not suicide?

A. At the same time it might——

Q. Hadn't the doctor told you it was impossible for it to be a case of suicide?

A. He said he didn't believe it was suicide; he didn't believe?

Q But you still insisted it was?

A. No, sir; I didn't afterwards.

Q. Didn't the doctor, when you first went there, tell you when you said you thought she had committed suicide, didn't he tell you no, it was impossible?

A. He didn't say it was impossible, he said he didn't believe it.

Q. It was after that you asked the doctor to go down to the house with you and see if she had left a note, because you thought she had committed suicide?

A. Yes, sir.

Q. What made you insist it was suicide; was there ever anything in your relations that would lead you to think she would take her own life to get away from you?

A. There was not.

Q. Then how was it you thought she had committed suicide?

A. As I told you, I didn't hear anything about it. I was not 100 feet from her when the murder was committed, and I was laying asleep, and it was strange to me I didn't hear anything, not a sound, and neither did the old man.

Q. Were you 60 feet from her when that woman was killed?

A. The sheriff said she got killed or struck up the hill. Where they found my wife was not fifty feet.

Q. Not from where you were lying asleep that night?

A. That is what I am saying, not fifty feet.

586 Q. You sleep in the saloon?

A. Yes, sir.

Q. Don't you usually lock the doors when you go to sleep?

A. I turn the lamps out.

Q. Usually lock the doors when you go to sleep in the saloon?

A. No, sir.

Q. Do you usually leave your doors open?

A. I do.

Q. Didn't you tell the jury you usually left this door unlocked?

A. On Sunday.

Q. Do you mean to tell the jury that you usually go to bed at night with your saloon doors unlocked?

A. Yes, sir.

Q. Do you leave them standing open?

A. No, sir; I close them.

Q. Did you close that south door that night?

A. My wife was out——

Q. Did you close that door when you went to bed?

A. No, sir; I was laying on the cot reading a paper and my wife was sitting on the cot beside me.

Q. She walked out that south door and left it open?

A. I think she closed it.

Q. Was it closed when you went to bed that night?

A. I was laying there and never got up any more.

Q. Was it closed when you went to bed that night?

A. I didn't went to bed at all.

Q. You lay down to sleep?

A. Yes, sir.

Q. Was that south door closed or open when you lay down to sleep?

A. That is impossible for me to tell.

Q. Weren't you afraid to go to sleep for fear some one would come in and drink your whiskey and beer? You had cigars there, hadn't you?

A. Yes, I guess I had.

587 Q. Weren't you afraid people would come in and take those things?

A. I was lying right behind it.

Q. You sleep soundly, don't you?

A. Yes, sir.

Q. You sleep so soundly you didn't hear your wife being killed fifty feet away?

A. Yes, sir; I did.

Q. Do you think you would hear a man if he came to take your cigars?

A. That is what I said; I couldn't get in my head how it happened.

Q. You go to sleep in there and leave your saloon doors unlocked?

A. Not always; when I go to bed usually I turn the lamps all out and close everything when I undress.

Q. Why did you go to sleep that night without turning the lamps out?

A. I was reading the paper to my wife.

Q. You dropped to sleep accidentally?

A. Yes, sir.

Q. You didn't go to bed?

A. No, sir; I laid down on the bed but didn't undress.

Q. When your wife left why didn't you get up and go to bed as usual?

A. I was reading the paper.

Q. And you just dropped asleep?

A. Yes, sir.

Q. Back there?

A. Yes, sir.

Q. That was the reason of it?

A. Yes, sir.

Q. Let us come back to Sunday night; you say your wife lived at the house there and your little girl?

A. Yes, sir.

Q. Did your little girl ever sleep in the saloon before that Sunday night?

A. Lots of times.

Q. Why did she sleep in the saloon with you instead of in the house with her mother?

A. My wife has sometimes been drinking a little bit and I put her to bed.

588 Q. You tell this jury that your wife was in the habit of getting drunk?

A. She drinks sometimes a little too much.

Q. You put her to bed, did you?

A. Yes, sir.

Q. She was drunk?

A. Yes, sir.

Q. That is what you mean?

A. Yes, sir.

Q. How often did she get drunk?

A. Oh, I don't know how often she got drunk, not often, only when I wasn't there, when I went to the city on business.

Q. What was the reason you kept the little girl at the saloon Sunday night? Was your wife drunk that night?

A. Yes, sir.
Q. That was the reason?
A. No, sir; because the little girl was on the bed already as I came in.
Q. How many beds were there in the house?
A. Only one.
Q. Did the little girl and her mother sleep together?
A. Yes, always together.
Q. So instead of going to the house and sleeping down there or staying there when your wife was drunk you put her to bed, locked up the house, took the little girl to the saloon, and stayed there with her?
A. That is right.
Q. When was the last time prior to this Sunday night the little girl stayed in the saloon with you?
A. I didn't put it down, a couple of months before, perhaps longer.
Q. You say that night your wife was in Lauengerber's house?
A. Yes, sir.
Q. She had been drinking too much?
A. Yes, sir.
Q. Where did she get the liquor; your saloon?
A. Yes, sir.
Q. You were there, weren't you?
A. I was out in the house or in the garden reading the papers.
589 Q. You say she was drunk that night?
A. A little drunk, I said; I didn't say she was full, she had been drinking.
Q. Did she know what she was doing and saying; could she walk steadily?
A. I don't think she could.
Q. Now, that Sunday evening you had a little dispute in the yard?
A. Yes, sir.
Q. You' wife had been upon the ground.
A. Yes, sir.
Q. Did you catch her by the hair?
A. No, sir; I didn't.
Q. What was the condition of her hair when she went to Laurenberger's, as to being down her back and disordered?
A. The condition of her hair was all right to my knowledge.
Q. How was it, as to being down or up?
A. That I couldn't say.
Q. Your little girl was there that night?
A. She was.
Q. You didn't strike your wife that night?
A. No, sir.
Q. Only slapped her?
A. No, sir.
Q. Never did?
A. No, sir.
Q. You told your wife to go home and go to bed?
A. Yes, sir.
Q. Didn't she tell you right then and there, in the presence of Laurenberger's, that she wouldn't do it, because if she did you would kill her?

A. She didn't.
Q. What time of night was it you went to the saloon?
A. About nine o'clock I guess.
Q. She came to the saloon door soon after and knocked, didn't she?
A. I guess she did.
Q. Don't you know she did?
A. I think she did.
Q. Don't you know she did?
A. I am not certain; I think she did.
590 Q. Didn't your wife come to the door and knock, and ask for you to open the door and let her in?
A. It was after I was in bed.
Q. Wasn't it when Laurenberger was there?
A. I think not.
Q. Will you say it was not?
A. I cannot say for sure.
Q. What door did she come to?
A. I don't know which door she knocked at.
Q. Don't you remember what door?
A. No, sir; not now.
Q. Wasn't it the south door?
A. She might; I couldn't say.
Q. Wasn't the door locked?
A. Both doors were locked.
Q. That Sunday night when you had the little girl there both doors were locked?
A. Yes, sir.
Q. Monday night neither door was locked?
A. Sunday nights saloon keepers' doors are always locked.
Q. Monday night neither door was locked?
A. No, sir; me and my wife was there.
Q. After your wife left neither door was locked?
A. I was reading the paper there.
Q. Neither door was locked?
A. That's right.
Q. How did you come to lock the door Sunday night and not do it Monday night?
A. We always have the doors locked Sunday.
Q. I thought you said your wife went to the saloon and got drunk?
A. She went in the west door. The west door was open.
Q. I thought you said both doors were locked Sunday?
A. That is when I go out.
Q. Who carried the keys to the doors?
A. She, and sometimes I, did.
591 Q. Who did that Sunday?
A. I did.
Q. How did your wife get into the saloon if both doors were locked?
A. I stated most of the time I was in the saloon, and I went down to supper and read the papers, and we generally leave the west door open when I go to supper or any meals. We can see from the kitchen right into the saloon.

Q. When was it your wife got into the saloon and got drunk?
A. She stayed till dark in the saloon reading the paper.
Q. When was it she got in there and got liquor to make her drunk?
A. Right after supper.
Q. That was when she got drunk?
A. That is right.
Q. How could you see from the saloon to the house after dark whether anybody went in there or not?
A. She was in there.
Q. Was it dark when she went?
A. No, sir; it was not.
Q. So when she came back there and had the dispute with you about watering the garden she was drunk?
A. She seemed to be a little drunk.
Q. Why didn't you let her in that night she knocked on the door and wanted in?
A. I was going to bed and I told her to go to bed.
Q. If you had gone to bed Lauenberger was not there?
A. No, sir; I think he was not.
Q. Will you say positively?
A. I cannot say positively; I don't remember.
Q. If Lauenberger was there, you had not gone to bed?
A. No, sir.
Q. Then what reason did you have for not letting her in?
A. She had no more business in the saloon, and I told her before to go to bed with the little girl; to bring her to bed.
592 Q. Did you offer to take down the little girl with her to the house?
A. She was afraid.
Q. What was she afraid of?
A. Her mamma was a little drunk.
Q. Annie was not at all afraid about what you had done in Lauenberger's house?
A. She was not there; she stepped in and went right out.
Q. Where did she go?
A. Went down to the house first and then to the saloon.
Q. Then Annie was not in the house when you and your wife were at Lauenberger's?
A. She was in at first but didn't stay there long, a minute or two, and told mamma to come along, but mamma didn't come.
Q. What was the reason your wife gave for not going that night to the house?
A. She said she would go when she got ready. She was going to stay there.
Q. When your wife got drunk you put her to bed usually, didn't you?
A. Yes, sir.
Q. Why didn't you take her that night when she knocked at the door; why didn't you see that she got in bed and then come back to the saloon?
A. I have been in Lauenberger's room, but she would not do it, and I got tired and went over to the saloon and left her. Before I asked her half a dozen times.

Q. Do you know where she spent that night?
A. At the house.
Q. How do you know?
A. She was there in the morning.
Q. What time in the morning did you see her?
A. 6 o'clock.
Q. You don't know when she got back to the house?
A. No; I couldn't swear to that.
593 Q. You don't know whether she went to a neighbor's crying or not?
A. I don't know.
Q. The next day, on Monday, what did you say to Mr. Lauenberger, after your hands were tied, about the sheriff on Tuesday morning? Did you tell him not to say anything about what took place in his house that Sunday night?
A. No, sir; I didn't; if I did the officer was along with me and must have heard it.
Q. Did you, or did you not, say that?
A. I didn't.
Q. On that Tuesday your wife and you were pleasant all right?
A. Yes, sir.
Q. Where did she go that afternoon?
A. At the dinner table we were talking about the schoolmarm, and she told me she was going to the schoolmarm and make arrangements——
Q. Do you know whether she went to Blom's that afternoon about three o'clock?
A. She told me she came back——
Q. Did you know before she went she was going to Blom's?
A. No, sir.
Q. Did she leave the house with her cape and hat on about three o'clock?
A. Yes, sir; she came to me and said goodbye.
Q. Was she crying?
A. No, sir.
Q. She was not?
A. No, sir.
Q. What time of day was it she went to Blom's?
A. Between three and four o'clock.
Q. Do you know why she went away that afternoon?
A. Yes, sir; she was going over to the schoolmarm to make arrangements about Annie—about my little girl.
Q. Hadn't Annie gone that morning and taken her clothes to stay?
A. Yes; and she was going in the afternoon to make arrangements about the paying business.
594 Q. I thought you told the jury on Monday morning your wife had made arrangements about keeping Annie and teaching her to paint.
A. She did before.
Q. How was it if she told you that Monday morning that she had made arrangements, how was it she was going Monday afternoon to make arrangements?

A. They had not spoken about the payment—how much she was going to pay, how much this woman wanted if Annie was going to take lessons.

Q. Then why did you tell Annie she could stay there before any arrangements were made?

A. I didn't tell Annie.

Q. Didn't you tell the jury that you told Annie Monday morning when she had entreated you to go that she could go.

A. I didn't.

Q. You never gave her permission to go and stay with Miss Noble that night?

A. After her mamma told her she could go, and she asked me three or four times, I said all right.

Q. That morning at breakfast your wife told you she had made arrangements with Miss Noble for Annie to go there, and for Miss Noble to teach her how to paint; is that right?

A. Yes.

Q. You believed it, did you?

A. Yes, sir.

Q. When she told you in the afternoon that she was going to see the teacher to make arrangements what did you say to her?

A. I told her that in the morning.

Q. What did you say to her in the afternoon when she told you she was going to make arrangements with the teacher?

A. I didn't say nothing to her then.

595 Q. In what direction did the teacher live from where you live?

A. I don't know; I have never been there.

Q. Where was the school?

A. On the State road.

Q. In what direction?

A. Right across from Harry Haynes' store, as you come from Sandy to Salt Lake City.

Q. Which direction does the little girl go from your house?

A. There is a good many directions.

Q. Which direction did she usually go?

A. I don't know; she generally took the right direction, the direction the gentlemen took the other day.

Q. Which direction is that?

A. Go up the hill by the smelter.

Q. She went south up the hill and over that way by the smelter?

A. Yes, sir.

Q. That is the direction Annie went to school?

A. Yes, sir.

Q. Did your wife go in that direction that day?

A. Yes, sir.

Q. What direction does Bloom live from your saloon?

A. Right that way from the schoolhouse; up that way, south.

Q. She told you she was going that afternoon to make arrangements with the schoolmarm about taking Annie?

A. Yes, sir; about the payment.

Q. What time did she come back?

A. I don't know exactly.

Q. Was it about six o'clock?

A. Somewhere about that.

Q. Didn't she go to Mrs. Berg's again?

A. No, sir; she didn't leave; she went into the saloon, took off her hat and cape, and came to me and asked for a glass of beer; she went in there and then came out to me; I was on top of the stable handing down boards.

596 Q. Couldn't she have taken a glass of beer herself?

A. Yes.

Q. Why didn't she take it without asking you about it?

A. She came and told me there was none in the barroom and to tap a keg.

Q. Your keg had run dry?

A. Yes, sir.

Q. Did you give her a glass of beer?

A. Me and my wife and old man Lauenberger took a glass of beer.

Q. What time of night was it your wife got the glass of beer after she came back?

A. As soon as she came back——

Q. What time was it?

A. Between five and six, I guess.

Q. Have supper that night?

A. Yes, sir.

Q. When you were having supper who came there?

A. My brother-in-law, Mr. Pearson.

Q. They wanted a glass of beer, too?

A. Yes, sir.

Q. So, you had a fresh keg on tap for them?

A. Had a keg tapped; yes, sir.

Q. How long were they there?

A. About fifteen minutes, I should judge.

Q. Anything said by Smith, your brother-in-law, about your wife going down to Sandy and staying with them that night?

A. Not that I heard.

Q. They went away about what time?

A. It must have been about 8 o'clock.

Q. Where did your wife go then?

A. She stayed with me.

Q. Till about ten o'clock, didn't she?

A. Right in the saloon or outside around *your* place.

597 Q. Was she outside of the saloon at any time along about ten o'clock that night?

A. She was talking with two ladies there.

Q. Who were they?

A. Mrs. Lillie Birch.

Q. What time of night was it?

A. After nine o'clock.

Q. But after that was she alone out there?

A. She went into the saloon again; we both went in and out.

Q. Did you see Mr. Gilbert there that evening and his wife?

A. That is just before supper, as I stated before.

Q. Was it about the time you were giving your wife this glass of beer?
A. I gave her a glass of beer then.
Q. Was it the same time you tapped the fresh keg?
A. No, sir.
Q. Was it before you had supper that Gilbert came there?
A. Yes, sir; my wife asked me the second time——
Q. What was your wife doing in the saloon?
A. — to come and eat supper.
Q. Did you chase her out that evening when Gilbert was there?
A. No, sir; we were just going down to the house to eat supper.
Q. Friendly?
A. Friendly.
Q. Didn't you call and say, Here is Mr. and Mrs. Gilbert; come back?
A. Yes; I might have.
Q. Did she come back?
A. She might not have heard it.
Q. Did she come back?
A. No, sir; she wanted me to come and eat supper.
Q. You were going out close together?
A. Yes, sir.
Q. How far was she ahead of you?
A. Quite a bit.
Q. Were you chasing her?
A. No, sir; not whatever.
Q. Why didn't she stop and speak to Mrs. Gilbert?
A. She had no use for Gilberts.
598 Q. Why did you call your wife back to talk to a man she and you had no use for?
A. Well, he stopped there and his wife was there, and so I called her back to talk to his wife.
Q. You stated the reason your wife didn't stop and speak to the Gilberts was that she had no use for the Gilberts?
A. Yes; that's right.
Q. Yet you called her back and asked her to come back and speak to them?
A. I don't think I called her back. I might have said, Here is Mr. and Mrs. Gilbert coming; they passed by the road. As we came out they drove on.
Q. Didn't you state a while ago to the jury that you did call her back?
A. I might have said, There is Gilberts passing by; I don't think I said I called her back.
Q. Didn't you give as a reason why she didn't come back was that maybe she didn't hear you?
A. That is what she said afterwards at the supper table.
Q. Did you call her to come back or not?
A. I don't remember that I called to her to come back, here is Mr. and Mrs. Gilbert coming. I couldn't say if she was coming or not, for they were passing by the saloon with a team. They might have gone to turn around down below. They can't turn between the brewery and saloon, that is impossible; they have to pass by.
Q. Did they have any business with you that night?

A. Yes; they stopped, and that time Mrs. Thiede went into the house.

Q. Didn't Gilbert come in and turn his team around in here by the saloon?

A. You can not turn a team there.

Q. Where can you?

A. Farther down, past Lauenberger's house.

599 Q. Where was Gilbert and his wife when you went outside of the saloon?

A. They had driven up here.

Q. When you and your wife went out of that west saloon door, where was Gilbert and his wife in the buggy?

A. As me and my wife started to go to supper, they both came from the west and were passing by with a team.

Q. Which way?

A. This way; here we were and here they stopped.

Q. Where were they when you came out of the saloon door?

A. They passed by there, sir.

Q. Didn't they come to see you?

A. They went and turned around; I couldn't see if they were going to stop or not.

Q. Why didn't you go on with your wife?

A. I did.

Q. How far did you go?

A. Outside of the saloon and turned back.

Q. Why did you turn back?

A. Because by that time Gilbert had turned around and stopped.

Q. Didn't you say to your wife, Mary, here is Mrs. Gilbert; come back?

A. My wife was then down to the house already.

Q. Didn't you say to your wife when they stopped, to come back and speak to Mr. and Mrs. Gilbert?

A. I don't think I did.

Q. Then you didn't ask her to come back at all?

A. No, sir.

Q. Why didn't you say that sometime ago when I asked you?

A. I didn't understand the question.

Q. How did your wife come to say at the supper table she didn't hear you; who brought the subject up?

A. My wife said: It is kind of funny that Gilberts come around here; he has not been here since he had you arrested for selling liquor on Sunday.

600 Q. How did your wife come to say she didn't hear you call?

A. We didn't speak about that.

Q. How did it come you said that your wife said to you she didn't hear you call?

A. She didn't say anything about that.

Q. But you say she might not have heard was the reason she didn't come back.

A. I called her, I guess.

Q. Did you call her?

A. I don't remember; I might have done so, and I might not.

Q. Didn't you state to the jury, before this squabble took place you didn't call her to come back?

A. I might, and I might not.

Q. Did she say to you that night she didn't hear you call?

A. I don't know that it was brought up that she didn't hear me call her.

Q. Did she or did she not give you as a reason for not coming back, that she didn't hear you call?

A. I don't think there was any reason made at the supper table.

Q. Didn't you state awhile ago that was the reason she gave at the supper table?

A. She might have done it.

Q. Didn't you say you didn't call her to come back and see Gilberts?

A. I might, as I stated before. I might have said there is Gilberts coming by——

Q. Did you or did you not call her to come back?

A. — meaning, there is Gilberts passing by.

Q. What was Gilbert's business with you that evening?

A. He passed by and turned around and had a quart of beer.

Q. I thought you said you had no use for Gilbert.

A. That is what my wife said at the supper table.

601 Q. You said you had no use for Gilberts, and your wife hadn't, either?

A. No, sir; that's right.

Q. They were friendly enough to come and buy beer?

Q. You sold them the beer?

A. Yes, sir.

Q. Took pay for it?

A. Yes, sir.

Q. And were friendly enough?

A. Any business man would.

Q. So that you had use for Gilberts, hadn't you?

A. Of course I would sell him beer; I had to sell beer whether I had use for him or not; I couldn't deny to sell him beer.

Q. You say Mrs. Berg came at what hour?

A. It must have been between eight and nine o'clock; I didn't look at the time at all.

Q. Then your wife went in after you left and you read the paper, did you?

A. Yes, sir.

Q. And she left about ten o'clock?

A. A little before ten.

Q. How was she dressed when she left?

A. The clothes she had on all day.

Q. Hat?

A. No, sir.

Q. She had a hat when she went to Blom's?

A. Yes, sir.

Q. Then she didn't have the clothes she had on all day?

A. She didn't have the hat.

Q. Did she have on a cape?

A. Yes, sir.

Q. She left about ten?
A. A quarter or twenty minutes to ten.
Q. You knew the industrial army was close by?
A. Yes, sir.
Q. You didn't like them much?
A. I had no reason to dislike them.
Q. You went to sleep with the doors of your saloon unlocked that night?
A. I didn't go to bed to go to sleep; I dropped asleep.
602 Q. And the light burning?
A. Yes, sir.
Q. How many lights did you have burning?
A. Four lights at the time I laid on the lounge.
Q. That was Monday night?
A. Yes, sir.
Q. Didn't you state to Henry Weiler that you got up and went out of the south door to urinate, and from there you looked east and saw your wife lying?
A. I did nothing of the kind.
Q. You did nothing of the kind?
A. I did not.
Q. Did you tell Henry Weiler how you came to find your wife?
A. I told the doctor.
Q. Did you tell Henry Weiler?
A. Henry Weiler was not there.
Q. Did you tell Henry Weiler?
A. I might have talked to him; but, as I stated, I was so excited and nervous——
Q. You know Henry Weiler?
A. Yes, sir.
Q. He is a German?
A. Yes, sir.
Q. Talks German?
A. He didn't talk German to me.
Q. He can talk German?
A. He never spoke German to me.
Q. Do you know he talks German?
A. Certainly I do.
Q. That is what I asked you. He does?
A. Yes, sir.
Q. Didn't you ever talk with him that morning after he came over there and tell him how it was?
A. He asked me some questions, and I told him the same as I told the doctor.
Q. Did you tell him how you found your wife?
A. I don't think I told him; I might have told him something about it—how the Swedes came there.
Q. Will you say that you didn't tell Henry Weiler you went out of the south door there to urinate, and you looked east and saw your wife lying there and went up to her?

603 A. I don't remember; I was so overwhelmed and excited. Weiler came in the morning.

Q. Did you tell the doctor the same thing?

A. I told the doctor the same as I told you here in court.

Q. Didn't you tell the doctor you looked around and saw your wife?

A. I told the doctor the same as I tell you.

Q. Didn't you tell the doctor you went close to her and said, Mary, what is the matter?

A. Yes, sir.

Q. Did you tell the doctor she replied to you, O, Charley?

A. Not then.

Q. Then you didn't tell the doctor that when you said to your wife, when she was lying on the ground, when you first found her, Mary, what is the matter, you didn't tell the doctor she replied, Oh, Charley

A. I told the doctor I took her up and she made some kind of a noise.

Q. Did you tell the doctor and Henry Weiler, both, that she said to you that morning, Oh, Charley?

A. I didn't—not in that way.

Q. You say that?

A. Yes, sir.

Q. That you didn't say to the doctor you said O, Charley?

A. At the time I took her up——

Q. Show where you found your wife lying.

A. Right in front of the window.

Q. Make a mark.

A. (Witness marks it.)

Q. So that the light shown' upon her?

A. Yes, sir.

Q. That is where she was when the doctor went over there?

A. Yes, sir.

Q. You didn't carry her away any place?

A. No, sir.

604 Q. How many feet is that from the southeast corner?

A. I don't know.

Q. About fifteen feet?

A. About the middle of the room; here was her head, her feet here.

Q. How many feet is the window from the southeast corner?

A. I think the building is 40 feet by 24 or 22 or 21.

Q. Is there a window in the center?

A. This is the window.

Q. Then it is not true your wife was found about three feet from the southeast corner of the building?

A. This way, you mean, or this way?

Q. Was she lying there?

A. If that is five feet long she must have laid here.

Q. Was she lying within three feet of the southeast corner of the building or not?

A. From there to here, it may have been three or four feet, or perhaps five feet; the body was five feet long—that might be—I can't tell exactly.

Q. She was lying so that the light shown' upon her so that you could see her quite a distance off, couldn't you?

A. I came along here and the light was right here in front and the lights show'——

Q. You could see her 10, 12, or 15 feet away, couldn't you?

A. Yes; it might have been.

Q. You went out there and found her?

A. Yes; I did.

Q. And you turned her over?

A. Yes, sir.

Q. Did you cross her feet?

A. No, sir; I didn't.

Q. Did you adjust her dress?

A. Her dress was all up.

Q. How high up?

A. Away up.

Q. Above the knees?

A. Away above the knees.

605 Q. Up nearly to her middle, wasn't it?

A. Yes, sir.

Q. Lifted up?

A. Yes, sir.

Q. That is when you went out and found her?

A. Yes, sir.

Q. Did you fix that dress any?

A. I pulled one side as I turned her over.

Q. Did you pull the dress down?

A. I think I did.

Q. Did you?

A. I couldn't tell if I did now; I was so excited when I saw her I dropped her right then and there, the same as if my own throat was cut.

Q. You got the old man?

A. Yes, sir.

Q. You say you didn't take a lamp, candle, or any other light?

A. I didn't.

Q. How did you know your wife's throat was cut?

A. She was right in front of the window.

Q. That is the reason you knew her throat was cut?

A. It was light in the window; these windows were all open, and I couldn't help it.

Q. You didn't come out there with a light or candle?

A. No, sir.

Q. Before the doctor came there?

A. We didn't do anything.

Q. Did you or did you not?

A. I didn't.

Q. You went over there to Murray?

A. Yes, sir.

Q. Went into Harry Haynes' store to telephone?

A. Yes, sir.

Q. You wanted your relatives?
A. Yes, sir.
Q. Couldn't telephone to Sandy, because there was something the matter?
A. That is what Ahlberg said.
Q. Why didn't you telephone to the sheriff?
A. I told Ahlberg to telephone the sheriff.
606 Q. If he says you didn't he is mistaken; did you hear his testimony?
A. Yes, sir.
Q. Did you hear him say you didn't tell him to telephone the sheriff?
A. He didn't say that, to my knowledge. He said I told him to telephone to the sheriff, but he was so excited he didn't remember if he did or not.
Q. Do you sit here and tell this jury that is what you heard Ahlberg testify to?
(Objection, as unfair.)
Q. You say you did tell Ahlberg to telephone to the sheriff?
A. Yes, sir; we spoke quite a while about that.
Q. You were very much excited?
A. Yes, sir.
Q. You were terribly overcome because your wife was killed?
A. Yes, sir; I was.
Q. Did you meet a man on State road after you had been to the telephone office?
A. Yes, sir; as I went home.
Q. He asked where he could find a saloon?
A. Yes, sir.
Q. On State road?
A. No, sir; between the smelter and the brewery.
Q. Which direction was he coming?
A. I couldn't say.
Q. Did you overtake him?
A. I might have, I couldn't say. I met him by the smelter somewhere.
Q. Did you overtake him, or he overtake you?
A. I didn't notice him till he was right up to me.
Q. Did you tell the doctor that morning that this man that came there with you, you met him on the State road going down into Murray,
607 and the man asked where he could find a saloon, and you told him the saloons in Murray were closed, and to come with you?
A. That was old man Lauenberger met the man.
Q. Did you tell that to Dr. Farrabee?
A. I don't think I did.
Q. Did you or did you not?
A. No, sir; I don't think I did, that I met a man on State road, because I didn't.
Q. Then you say you didn't tell that to Dr. Farrabee?
A. No, sir.
Q. You didn't?
A. No, sir.
Q. Where did you meet this man?
A. Between the smelter somewhere.

Q. Where was it?
A. I couldn't tell exactly.
Q. You were so much worried you don't remember?
A. Yes, sir.
Q. He asked for a saloon?
A. If I knew where a saloon was.
Q. You said you were going to one?
A. Yes, sir.
Q. Did he come along with you?
A. I don't know.
Q. You never saw that man again till you both walked in the door together?
A. We didn't walk in together.
Q. How close did you come together?
A. As soon as I stepped into the saloon a second or two afterwards he was there too.
Q. You stepped in behind the bar when he came?
A. Not right away, he wanted a bottle of whiskey first and I took a look at him first.
Q. What did you look at him for?
A. I knew he was a stranger.
Q. You went in behind the bar that morning with your wife lying dead outside and sold him whiskey?
A. Yes, sir.
Q. And took pay for it?
A. Yes, sir.
608 Q. And you tell this jury you never saw that man or exchanged a word with him from the time you met him on the road until he walked into the saloon right behind you?
A. No, sir; the doctor went there next morning, and he will tell you the same; he never spoke to me.
Q. Did you hear Dr. Farrabee testify that you told him you met that man in Murray, over on the State road?
A. That is a mistake.
Q. Did you hear the doctor testify to that?
A. Not that I remember of.
Q. You don't remember he testified to that?
A. No, sir.
Q. Did you remember hearing the doctor testify that you told him the man asked where you could find the saloon, and you told him the saloons were closed in Murray, to come with you?
A. I don't remember that.
Q. Stryker worked for you last December and January?
A. He was there a while; yes, sir.
Q. Did he work for you?
A. Yes, sir.
Q. Why not say so?
A. I did say so.
Q. He ground these knives for you?
A. He did.
Q. Did you have there a knife used in the saloon as a bread knife?

A. Yes, sir.
Q. He ground that?
A. Yes sir.
Q. Where was that knife Tuesday morning when the sheriff came down?
A. Farrabee had it in his pocket.
Q. Is that the bread knife?
A. I think it is.
Q. Where did Farrabee get it?
A. From the lunch counter.
609 Q. Wasn't the bread knife a long knife, black on one side and red on the other?
A. I only had that one knife ever since I have been there.
Q. Did you see the doctor have that knife that morning?
A. Yes, sir.
Q. Did the sheriff ask you when you were in jail where that big long bread knife was?
A. The sheriff never spoke to me since I have been in jail.
Q. Did you hear the sheriff testify?
A. I heard it.
Q. Did you hear the sheriff testify he asked you about that bread knife?
A. Yes; but the sheriff never spoke to me since I have been jail.
Q. Then it is not true he asked you about that?
A. No, sir.
Q. When the Irvine trial was going on didn't you speak to Stryker about Irvine having killed Montgomery and being acquitted?
A. We might have talked about it.
Q. Did you or did you not?
A. I can't remember.
Q. Did you mention that Judge Powers got Irvine free in that case?
A. The paper stated that.
Q. Did you and Stryker talk about that?
A. We might have talked about the case.
Q. Did you ask Stryker if he thought Judge Powers could get a man off if he committed a murder?
A. I never did.
Q. Judge Powers was your lawyer in this case before the coroner and magistrate?
A. I had no lawyer employed until lately; as I said in the beginning, I didn't need a lawyer.
Q. Judge Powers was there, wasn't he?
A. He came there; yes, sir.
610 Q. And examined the witnesses?
A. Yes, sir.
Q. He was there before the coroner?
A. At that time he was in Idaho or Colorado somewhere.
Q. He was there before the magistrate two or three days?
A. Yes, sir.
Q. And examined witnesses on your behalf?
A. Yes, sir; he came to me without my asking him.
Q. He came there without being asked; do you mean to tell the jury that?

A. Yes, sir; you can ask Judge Powers.

At this time the court gave the customary warning to the jury about speaking about the case, etc., and adjourned until 10 o'clock to-morrow morning.

611 FRIDAY MORNING, 10 A. M., *October 19th*, 1894.

CHARLES H. THIEDE on the stand.

Cross-examination continued by Judge HOWAT:

Q. Your wife expressed a desire to go and see the industrial army that evening?

A. Yes, sir.

Q. Did she want you to go with her?

A. Yes, sir.

Q. Why didn't you go?

A. I was busy all the time in the evening.

Q. When was it she expressed that desire?

A. Some time in the afternoon.

Q. You said she went away about three o'clock; was it before or after that?

A. After that.

Q. She came back about half past five?

A. Or six.

Q. Was it after supper time?

A. Just about the time she came back I made a motion we were going there.

Q. Why didn't you go that evening?

A. I couldn't get away.

Q. Were you busy?

A. Yes, sir.

Q. Didn't go to Lauenberger's after he came back about nine o'clock and tell him you would like for him to go to the army with you?

A. No, sir.

Q. Didn't you have some conversation with Lauenberger about going to see the army and wanted him to go back and see the army again?

A. No, sir; we were talking when we put up the pig pen.

Q. Didn't you ask him about that?

A. No, sir.

Q. Where was this sister of Gilbert's going to be sick; where was she living?

A. Burgatown.

Q. What is her name?

A. Mrs. Etchel.

612 Q. Who was she living with?

A. Her husband.

Q. How far from the road which runs north and south near your saloon?

A. It might have been two or three hundred feet; I can't tell exactly; where the—third or fourth house.

Q. Which was it?

A. Left-hand side.

Q. Who lived in the house besides this woman and her husband?

A. I don't know.

Q. When did she speak about going over there that evening?
A. She didn't speak about it.
Q. What made you think she had gone there that night?
A. As we went down to the supper table talking about Gilbert—you know, her half sister; she was well acquainted with my wife and she was going to be a mother pretty soon.
Q. Did she say anything about going there at all?
A. My wife didn't say anything to me at the time.
Q. Did she say a word about going there that evening?
A. No.
Q. What got it into your head that maybe she was over there at 12 o'clock at night?
A. I couldn't find her at the time and I couldn't make out where she went to. Just before she eat supper she said this woman was about to become a mother, and when I couldn't find her I thought some one had come and called for her. Her name was Amelia Ann.
Q. You thought they probably called?
A. For my wife.
Q. Where did Amelia Ann live?
A. I don't know.
Q. Then why didn't you go to the house and see whether she was there?
A. I told you as I came along here and stood there and looked for the windows—as soon as I came here I see some one laying there.
613 Q. I thought you said you went a little bit farther and saw there was nobody there?
A. You can see the lights better from here in the road.
Q. Were you in the middle of the road?
A. No; I was along here.
Q. You walked along the middle of the road?
A. Close by the fence here.
Q. And walked along the road to see whether she was in this house?
A. Right along here.
Q. It hadn't occurred to you that your wife had been killed then?
A. Not whatever, sir.
Q. And you went along this road with the idea in your mind that, perhaps, she was at this house over here?
A. Yes, sir.
Q. You were looking in that direction?
A. Yes; right straight east.
Q. That is the direction you were looking?
A. Yes, sir.
Q. Never thought she might be killed and lying along the roadside?
A. Not then.
Q. Why was it you washed your hands that night in the saloon?
A. After we went in you know I ran for a doctor.
Q. Any vessel you washed them in?
A. No, sir; as I told you there was three copper tanks behind the bar.
Q. That is where they held the water?
A. Yes, sir.
Q. What vessel did you wash your hands in?
A. No vessel at all; just turned the water on.

Q. Where did that run to?
A. Into the tanks.
Q. You didn't have a vessel there then?
A. Didn't look for a vessel.
614 Q. You heard Lauenberger say you had a tin basin there to wash your hands in?
A. The doctor had the tin basin. The old man went to the house to get him a basin.
Q. You heard the doctor say he didn't wash his hands?
A. The doctor did wash his hands and sent for a towel.
Q. You heard Lauenberger say that you had a tin basin.
A. I don't remember if he did or not.
Q. You didn't?
A. No, sir.
Q. You say you wanted the doctor to come down with you that morning after he had come there and after the remains had been carried into the house. Didn't you want him to come to your house?
A. That was when daylight came; yes, sir.
Q. You wanted to go down there to see if your wife left a note or not?
A. To find out if anybody broke into the house.
Q. Didn't you say you wanted to see if your wife left a note?
A. Yes, sir.
Q. You still insist your wife committed suicide. At that time you still insisted?
A. Yes, sir.
Q. The doctor told you it was impossible?
A. The doctor told me, but it was not settled in my mind.
Q. You went down there and went a little ways and something told you not to go any farther.
A. Yes, sir; into the hall way.
Q. Why didn't you go into your wife's bed room?
A. I went into the hall way; I didn't want to go alone.
Q. Were you afraid to go in there?
A. I was.
Q. What were you afraid of?
A. That something might happen—something told me——
615 Q. What were you afraid of?
A. Something struck me and I asked the doctor to go with me and I came to the hall way.
Q. It was daylight?
A. I thought I had better wait till someone came.
Q. It was daylight?
A. Yes, sir.
Q. You were afraid to go into your own house?
A. Yes, sir; alone.
Q. You wanted to go in for the purpose of seeing if your wife left you a note giving a reason why she committed suicide?
A. Yes, sir; I thought she had left a note and I wanted to see if any stranger had got in there; the curtains and blinds were all drawn.
Q. Hadn't you been in the house twice before that?
A. No, sir.

Q. How many times?
A. Once.
Q. Went in through the window?
A. Yes, sir.
Q. You were not afraid that time?
A. No, sir; I was not because there was a man along with me. Lauenberger was along.
Q. He stood outside?
A. Right by the window, and the window was open and he was right there seeing what I was doing.
Q. What kept you from going in the second time, was it because you were afraid if you went in there some one might accuse you of killing your wife?
A. I didn't go in because I asked the doctor and he said we had better wait till the sheriff came, and I said we better go along and I thought he followed.
Q. Was the reason that after you got into the hall you would not go any farther because something told you you had better not go; was it because you were afraid if you went in there, somebody would say you killed your wife?
616 A. I don't know what didn't make me go in there; I can't explain that to you. And I turned around and the doctor didn't come and he was in the doorway and I came back.
Q. This man you met on the road coming back from the doctor's, can you tell where you met him?
A. No, sir; I couldn't.
Q. Can you tell which direction he was going when you first saw him?
A. I don't remember that, it was dark, you know.
Q. And you were overwhelmed?
A. Yes, sir.
Q. You couldn't remember?
A. No, sir.
Q. Did you look at him closely, was it light when you met him?
A. It was dark.
Q. You never saw him again till he followed you into the saloon?
A. Yes, sir.
Q. Was it the same man?
A. I think it was.
Q. How do you know?
A. Because he was a stranger, everybody around there knows where the saloon is, and he asked where a saloon was and I told him I was going to one.
Q. You knew there were three hundred strangers there at that time?
A. Yes, sir; 500.
Q. And yet you knew this man was the same man you met on the road because he was a stranger?
A. I couldn't swear it was the same man, but as I came in he came after me.
Q. Don't you know whether that man was the man you met on the road?
A. I think it was.

Q. What makes you think so?

A. He asked where a saloon was, and I told him to follow me.

Q. Why didn't you tell him to come along with you?

A. I had no conversation with him and didn't speak to him.

617 Q. You didn't talk to him at all?

A. Not a word.

Q. When he came into the saloon you went behind the bar and sold him the whiskey?

A. Yes, sir.

Q. Didn't you tell the doctor that was the man you met on the State road?

A. What road is that?

Q. The road that runs past Harry Haynes' store.

A. That is the road.

Q. Didn't you meet him on that road?

A. Lauenberger met a man there.

Q. How do you know you didn't meet this man that came into your saloon and got whiskey when your wife was lying dead—how do you know you didn't meet him on the State road?

A. It was between the smelters, I remember that.

Q. You just told me you didn't know where it was.

A. I can't tell exactly this side of the smelter or the other side, but I know it was between the smelters somewhere there; he was going to the State road or from the smelters to the brewery.

Q. When you wanted the doctor to go down to the house you told him you wanted the key, didn't you?

A. Yes, sir.

Q. Didn't you tell the doctor you couldn't get into the house because the key was in your wife's pocket?

A. He had the key already.

Q. You heard the doctor testify, didn't you?

A. Yes, sir.

Q. Is that true or not that you told the doctor you wanted the key to go into your house, and the key was in your wife's pocket?

A. I asked him to get me the key.

Q. Did you tell the doctor the key was in your wife's pocket?

A. No, sir.

618 Q. Did you at any time that morning?

A. No, sir.

Q. You heard the doctor's testimony that you did do so?

A. No, sir.

Q. It is not true?

A. No, sir.

Q. You say what the doctor said about that is not true?

A. It is not true.

Q. This stick here was in that shape in the brewery?

A. Yes.

Q. Isn't there a shelf comes along here—a wide board that comes along this way?

A. Yes; two boards; two right together; two shelfs.

Q. It laid in that horizontal position how high from the ground?

A. One is high enough to put a sledge hammer in, and a piece is out here on the lower board and I stuck them in there, and right above I have another board.

Q. How high from the ground is the first shelf?

A. I guess about 2½ feet from the ground.

Q. How wide is it?

A. I guess a 12-inch board; I am not quite sure.

Q. You say a day or two before your wife was killed you hung a couple of rabbits on this nail?

A. Yes, sir.

Q. And that is what you think made this blood here?

A. Yes, sir.

Q. Ever hang anything else up there?

A. All kinds of things.

Q. Were the rabbits bleeding when you hung them up?

A. Yes.

Q. How did you kill them?

A. With a hatchet.

Q. Had you skinned them?

A. Yes, sir.

Q. They were skinned when you hung them up?

A. Yes, sir. Sometimes I bought some from Weiler, too.

619 Q. These two you hung up a day or two before your wife was killed, were they skinned when you hung them up?

A. I think I skinned them before I hung them up.

Q. Were they skinned?

A. I skinned them before I hung them up.

Q. Had the entrails been cleaned out?

A. I had not cleaned them; my wife generally attends to that.

Q. You run the lunch counter and the bar?

A. Yes, sir.

Q. You had an ice chest there?

A. No, sir.

Q. Didn't you put up ice?

A. Yes, sir.

Q. Have you an ice chest in the saloon?

A. There is an *n*ice chest there, but it is of no use for three or four years.

Q. Did you use ice in the saloon?

A. Not at that time; in the summer time we had, behind the bar here. That is why I got this fixed up. We used to use the old ice chest, but it is all broken up.

Q. The sheriff came down there just a little after daylight that morning?

A. Just before the bell rung.

Q. You said you saw Bill?

A. Yes, sir; Bill McQueen.

Q. You have been friendly and called him Bill?

A. Yes, sir.

Q. He called you Charley?

A. Yes, sir.

Q. He had been to your saloon a week or so before that, hadn't he?

A. Yes, sir.

Q. How long have you known him?

A. Since he has been elected sheriff; a little before.

Q. Did you tell him that morning you had voted for him?

A. I don't remember whether I did or not.

Q. Didn't you tell him he ought not to arrest you, because you had always been his friend and voted for him?

A. I didn't.

620 Q. You were standing in this south door when you saw the sheriff drive around there, and you went back into the saloon behind the bar and took a drink of whiskey?

A. Yes, sir.

Q. When you saw the sheriff come down here you recognized him and said, Ther's Bill?

A. In my own mind I said Bill was coming and I was glad to see him.

Q. Why didn't you go out and meet him?

A. I wasn't going up to run in front of him when he comes down the hill with a horse and buggy driving fast.

Q. He was driving fast?

A. I think he was; he came down the hill there.

Q. It didn't take him long to get to the door?

A. I guess not.

Q. Why didn't you, when you were glad to see him and had wanted to telephone for him and told Albert Cahoon and the rest you were so glad now Bill is come, why didn't you go out and meet him and say, Somebody has killed my wife?

A. The sheriff was coming in, and I didn't want to run outside.

Q. What induced you to go behind the bar and take a drink?

A. I felt better as soon as I saw him.

Q. You took the whiskey because you were feeling better?

A. I wanted to feel better.

Q. Did his coming make you feel better?

A. Yes, sir.

Q. Was that the reason you took a drink of whiskey, because you were feeling better?

A. Yes, sir.

Q. You didn't take the whiskey to make you feel better, but because you were feeling better?

A. Yes; I felt glad he was coming; I was there all night alone with the doctor.

621 Q. That was not the first drink you had taken?

A. That was the second drink.

Q. You heard the doctor testify you took four or five drinks? You were in behind the bar, and the sheriff came into this door here—this west door?

A. I had the glass washed and was through drinking, and was standing there.

Q. Did you see him tie his horse?

A. That is what he claims. I didn't see him tie his horse.

Q. You were standing at the corner of the bar?

A. Montgomery tied the horse, and he came right in.

Q. You were standing by the corner of the bar, inside of it, and he came into that west door?

A. Yes, sir.

Q. Montgomery was with him?

A. Behind him.

Q. He said, Charley, what is the matter here?

A. Yes, sir.

Q. You heard his testimony, did you, that you said, I killed my wife last night?

A. That is what he testified.

Q. You heard Montgomery testify to that?

A. That is not true. When I say so, the doctor and all the rest will swear to it, too. And I said there was the doctor there, and five or six standing there.

Q. Your explanation counsel wants you to make is that the doctor was inside. You didn't say then that you had killed your wife last night?

A. I didn't.

Q. When you answered the sheriff he said, I put you under arrest, didn't he? The sheriff came in there and said, What is the matter, and you said something to him?

A. Yes, sir.

Q. He said, I put you under arrest?

A. Not then and there.

622 Q. Didn't you testify yesterday he put you under arrest right there?

A. A minute later he said it looks like you killed your wife; I can tell by your eyes.

Q. He said, It looks like you killed your wife, that is what he said in answer to what you said to him? When he said, Charley, what is the matter, and you gave him an answer to that question, he said to you, didn't he, It looks as if you had killed your wife? Was that what he said?

A. That was not the first thing he said. You don't let me explain——

Q. What was it he said?

A. He said, What are you doing that for? That is the first.

Q. The first thing he said is, What did you do that for?

A. Yes, sir.

Q. What did you say?

A. He said, You killed that pretty little woman. I said, You must be crazy or drunk.

Q. What did he say then?

A. He slapped me and said, You son-of-a-bitch, you are the man that murdered your wife, God damn you; then he hit me again in the face.

Q. When did he put you under arrest?

A. Then I was going to explain it to him, you know, that he must be crazy or he must be insane; said a man must be insane—a man of common sense, after I was here all night, and run to telephone and get you, and I am glad to see you. A man with common sense wouldn't accuse me of killing my own wife. A man that would do a trick like that must be insane or crazy, and he hit me.

Q. Hit you before he put you under arrest?

A. Before and after, right along.

Q. Where were you when he put you under arrest?

A. Montgomery was standing right here, and I was trying to
623 explain to him how I found my wife.

Q. Is this right—when he came in there he said, Charley, what is the matter?

A. Yes, sir.

Q. You said something to him?

A. Yes, sir.

Q. And he said, What did you do that for?

A. Yes, sir.

Q. That is the way it was said?

A. Yes, sir.

Q. Do you understand what I have asked you?

A. Yes, sir.

Q. That is your answer; that is the way the conversation was had between you?

A. Yes, sir.

Q. He struck you in the face?

A. Yes, sir.

Q. Did he make any bruises?

A. Yes, sir.

Q. Did you show them to anybody after that?

A. Yes, sir; my hands and arms I couldn't use them for a week.

Q. Did you resist him at any time?

A. I didn't do nothing to him.

Q. Didn't you struggle so that you would not be arrested?

A. I didn't.

Q. When he told you to sit down, didn't you say you would not sit down?

A. No, sir; I didn't.

Q. You say you are thirty-four years of age?

A. Yes, sir.

Q. What did you weigh at that time?

A. I guess 180 pounds.

Q. Do you know?

A. Yes, sir.

Q. You were in good health at that time?

A. Yes, sir.

Q. Didn't you resist the sheriff and say you would not be arrested?

A. I even got a rope for him to tie me. They couldn't find any rope, and I said, I know where it is, I will get a rope, and I got a rope; I couldn't do any more.

624 Q. You heard the sheriff say about your resisting him, did you?

(Objection, because the sheriff didn't say that.)

Q. Did you hear what the sheriff said about how you acted?

A. Yes, sir.

Q. Did he tell the truth about it or not?

A. He did not.

Q. Do you know Mr. Hills, the jailor?

A. Yes, sir.

Q. The man who testified here Wednesday morning?

A. Yes, sir.

Q. Did you see him that day at the noon recess when you were taken back to jail?

A. I see him every time I go back to the jail.

Q. Who took you back to jail—Steele?

A. He might; yes, sir.

Q. When you saw him that day did you say to him then, By God, Hil's, you scared me to-day when you took the witness stand. I didn't know but I had told you something, or I was afraid I had told you something or your wife something, and I didn't know but you were going to tell it?

A. Yes, that is right.

Q. What were you afraid you had told him?

Judge CHERRY. That is a violation of the rules of evidence; he is calling out on cross-examination entirely new matter not in any way connected with this examination or this crime.

Q. You have known Mr. Hills ever since you were in jail?

A. Yes, sir.

Q. He has been the jailor there?

A. Yes, sir.

Q. You know his wife?

A. Yes, sir.

Q. Talked to her?

A. Yes, I did, sir.

Q. And talked to Mr. Hills lots of times?

A. Every day. I have a room there right across from his office.

Redirect examination by Judge CHERRY:

625 Q. In your examination yesterday you were asked if Judge Powers was your attorney in your preliminary examination before the police court. I will ask you if you employed Judge Powers or sent for him, or knew anything about his coming there?

A. No, sir; I told them I didn't need any attorney.

Q. Judge Howat put the question, the examination lasted two or three days. I will ask you if you remember how long it did last?

A. One forenoon, I guess, or one day.

Q. It didn't last two or three days, did it?

A. No, sir; it might last, but they didn't take me there.

Q. Not in your presence?

A. No, sir.

Q. You heard Stryker's testimony, that frequently at meals you would call your wife a whore or a slut. Is that true?

A. I never did, sir.

Q. I will ask you if ever, at any time, you accused your wife of being untrue to you?

A. No, sir; I couldn't. She was as true a little woman as ever stepped on this ground.

Q. Any such suspicions in your mind?

A. I couldn't have such suspicions. I knew my wife was just as true as any woman that ever stepped on American soil.

Q. I will ask you if you were asked about some conversation you had with the old man about going up to the industrial army? Can you tell

the jury about when you had that conversation with Lauenberger about going up to the army, if you remember?

(Objection.)

Q. Did you, at any time, speak to the old man about going up to the industrial army?

626 (Objection, as immaterial.)

The COURT. The examination was on that point.

Q. Did you have any talk with old man Lauenberger about going to see the industrial army?

A. When my wife came back, as I stated, I was on top of the stable handing down some boards to the old man; my wife said there was lots of men passing by; we saw them passing on the track.

Q. Did you have any conversation?

A. We had a conversation by the stable there; we were going out that night. This was about six o'clock the same night as was spoken about.

Q. You say Dr. Farrabee's statement about finding the key to the house in your wife's pocket wasn't true. Will you state to the jury what was the first thing you remember being said about that after the doctor came there?

A. The body was taken in and the doctor examined it and I told him to look in her pocket, and I was standing on the other side of the pool table, and he pulled out the key and a handkerchief and he turned out the pockets and said, that is all she has in there.

Q. Did you say anything about the key before he took it out?

A. Nothing whatever. The doctor was doing the work there and I said nothing about the key.

Q. I want to ask you if ever since you have been married down to the 30th of April—tell the jury whether you loved your wife and had affection for her?

A. Certainly I loved my wife, and loved her as any man could love her. I took her to Germany when she was sick.

Q. Just answer the questions. I will ask you if you know who killed your wife?

A. Yes, I do.

627 Q. Do you know it of your own knowledge?

A. Yes, I do; and as soon as I get out I will have the man brought into court.

Q. Do you know it; did you see it done?

A. No, sir; I didn't see it done, but I think I can bring him into court in ten minutes if your give me my freedom.

Q. Did you kill your wife?

A. No, sir. If the scaffold was standing right here I would say I was innocent, but I could bring the man into court in ten minutes if you give me my freedom.

Cross-examination:

Q. This is the first time you have been a witness in this case; you have never testified or told anybody about it before in a public way or in the court room?

A. I told this same——

Q. Is this the first time you have testified?

This is the first time I have been on the stand.

Q. You didn't make any statement before the coroner?
A. No, sir.
Q. Nor before the magistrate?
A. No, sir; I didn't.
Q. Did you ask to be permitted to make a statement?
A. I left it to Judge Powers.
Q. What had Judge Powers to do with it? He was not your lawyer.
A. He came to my cell and said he would go with me up to the police court, because I had no lawyer and didn't want any.
Q. You left it to Judge Powers, didn't you?
A. Yes, sir.
Q. Were you present at the examination?
A. I think I was.
Q. The witnesses were not all called before the magistrate?
A. They had more there than you had here.
628 Q. Only some of them were called?
A. I had about twenty-five or thirty examined.
Q. Did Judge Powers examine all those twenty-five witnesses?
A. I don't know whether he did or not; we didn't have no witnesses.
Q. But you say there were a great many witnesses there and you didn't employ Judge Powers; he had nothing to do with your case?
A. No more than that he took interest in it and went down along with me.
Q. Didn't you leave the matter of your defense to Judge Powers at that time?
A. Certainly, I did.
Q. Then he was your lawyer in that case?
A. He took interest in it; I didn't hire him.
Q. And you did talk to Stryker in December or January and ask him if he thought Judge Powers could get a man off if he committed murder?
(Objection. Objection overruled. Exception.)
A. I didn't ask Stryker nothing of the kind; it was in the papers and we read the papers.
Q. Didn't you tell this jury on cross-examination you had a talk with Stryker about whether Judge Powers could get a man off for murder?
A. We might say that Judge Powers was a good lawyer in criminal cases; any man that reads the papers could talk about that.
Q. Didn't you ask Stryker if that was his opinion, that Judge Powers could get a man off that committed murder?
A. That is my opinion.
629 Q. Didn't you ask Stryker if he thought Judge Powers could get any man off if he committed murder?
A. I don't think I asked that of Stryker; he might have said he is a good attorney or a good lawyer.
Q. Then you did have some talk with Lauenberger that Monday night about going to the army?
A. Yes, sir.
Q. Didn't you suggest that it would be a nice thing to go up and see the army?
A. Me and my wife——

Q. Didn't you suggest to Lauenberger that he ought to go up and see the army that night?

A. I don't know why he had to go, or anything like that. We three spoke about it and the men were going along there, and I told her it was the industrial army.

Q. Who was the man that murdered your wife?

(Objection as not proper. Question waived.)

630 D. N. STRAUP, a witness called for the defense, examined by Judge Cherry, testified as follows:

Q. What is your business?

A. Attorney.

Q. In this city last April and first of May?

A. Yes, sir.

Q. Do you know Charles Thiede?

A. I do.

Q. Were you present at the preliminary examination held along the fore part of May?

A. I was at the coroner's inquest, and attended part of the examination before the magistrate.

Q. Do you know how long the preliminary hearing lasted?

A. Several days; I don't know just the number of days; Judge Powers attended the examination before the magistrate.

Q. Did it last several days?

A. That is my recollection.

Q. You were not there all the time?

A. No, sir.

Q. Is Judge Powers in his office?

A. No, sir.

Q. Are you a partner of Judge Powers?

A. Yes, sir.

Q. Do you know whether your firm, or you, or Judge Powers, was employed at the inquest or preliminary hearing by Mr. Thiede?

A. There was no definite employment. At the time of the inquest Judge Powers was in Idaho, and I was told that Mr. Thiede wanted to see us. I went to the sheriff's office and told him I would appear for him at the inquest and also at the preliminary hearing, and if we came to an agreement as to terms of course we would represent him; but we never came to any agreement as to terms, and that is why we didn't represent him.

Q. Do you know whether he sent for you?

A. Some one came to the office and told me he wanted to see me and I went and talked with him.

631 Cross-examination by Judge HOWAT:

Q. When you went to talk with him did he say, I have not sent for you?

A. No, sir.

Q. When you went did you say, I came in response to your message?

A. I did, sir.

Q. Did he say you hadn't been sent for?

A. No, sir.

Q. Did Judge Powers or yourself come down to the jail and volunteer to defend him before the coroner or magistrate?

A. We never did at any time. I will simply say, in justice to all parties, that the only reason we didn't represent him was simply because we couldn't agree as to terms.

Q. You represented him before the coroner and magistrate by his direction and at his request?

A. Yes, sir.

Q. In the hopes that an arrangement might be made so that you could be retained to defend him in the district court?

A. Yes, sir.

Judge CHERRY. *Q.* Didn't he say something about not needing an attorney in that conversation?

A. I think he did when I talked to him at the sheriff's office, and then I told him if he expected us or wanted us to defend him I wanted to be present at both examinations, so that I could see what the evidence was.

Q. Didn't you express an opinion to him that you thought he would need an attorney from what you already knew in the matter?

A. I think I did say that.

Q. Did he express the desire for an attorney, or did he say that he didn't need an attorney?

A. He made some remark that he didn't know whether he would
632 need an attorney or not, or something of that kind.

Judge HOWAT. *Q.* You told him you thought he did?

A. Yes; I told him I thought he needed an attorney.

Defendant rests.

633 And the following evidence was introduced by the people in rebuttal, viz:

Rebuttal.

CHARLES BIRKNER, recalled in rebuttal.

By Judge HOWAT:

Q. You said you had been a police officer for how long?

A. For some three years.

Q. When did you quit?

A. Some time this month two years ago.

Q. What have you been doing since that time?

A. Working at my trade.

Q. Who have you been working for?

A. Myself.

Q. Is it true you were discharged from the police force because you associated with lewd women?

A. It is not.

Q. You were discharged, weren't you?

A. No, sir.

Q. You quit?

A. I handed in my resignation.

Q. It was asked for?

A. I don't know anything about that; that is news to me.

The COURT. The record may show that the defense rests.

634 Dr. FARRABEE, called in rebuttal.

By Judge HOWAT:

Q. You testified you went over there on the morning of the first of May, when it was dark, about two or three o'clock, and found the body of Mrs. Thiede lying on the ground on her back with her feet crossed?

A. I didn't testify that her feet were crossed.

Q. She was lying on her back?

A. Yes, sir.

Q. Can you state to the jury whether she had been lying on her face in that place for any length of time?

A. No, sir.

Q. Immediately after she had fallen there in that pool of blood, can you state to the jury *can you state to the jury* whether that body was lying on its face or not?

A. It had not been on its face.

Cross-examination by Judge CHERRY:

Q. It was dark?

A. Yes, sir.

Q. Was the ground muddy?

A. No, sir.

Q. Dry around there?

A. Yes, sir.

Q. You stated her face was covered with blood?

A. Yes.

Q. Could you swear positively that body had not been turned over before you got there?

A. I think I can.

Q. From what evidence?

A. If the body had laid upon its face her face wouldn't have been so bloody; her eyes wouldn't have been all filled with blood, the blood would have naturally flown downwards and there would have been some evidence of pressure upon the face and nose, the most prominent part of the face. There were none. And there would have been some dirt upon the front of her face and her dress, and there was none.

635 Q. Didn't you state her clothes were soiled?

A. They were bloody.

Q. Didn't you say there was dirt on them in your former examination?

A. I think not.

Q. Could you tell whether the body had been lying on its side or not?

A. I don't think I could.

Q. I believe you said you had a poor light when you examined the body outside?

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. Do you remember what you testified before the coroner's inquest in reference to soil and dirt being found on her clothing?

A. I don't think I testified there was any dirt.

Q. Can you remember now what you testified to then?

A. I think it was something about her clothes being very bloody.

Q. Do you remember this question being asked you: The deceased had on drawers, I suppose, or did you notice?

A. Yes, sir.

Q. Do you remember your answer?

A. She did.

Q. Then the question: State how you found them upon her person?

A. Yes, sir.

Q. Do you remember your answer?

A. That they were in the usual condition.

Q. Wasn't this your answer? They were drawn up some toward the knee?

A. Her clothes or drawers?

Q. Drawers.

A. It may have been.

Q. Then the question: From the ankles up? And your answer: Yes; there was considerable; some mud upon the knee, or dirt?

A. Yes, sir.

636 Q. That was your answer?

A. Yes, sir.

Q. That was true, was it?

A. Yes, sir.

Q. The reason you give why the body never did lie on its face is that there would be some flattening of the nose or features. Wouldn't that depend upon the length of time it lay on its face?

A. It would.

Q. If it had lain on its face several hours that would show perceptibly?

A. Yes, sir.

Q. But if it had lain before it got cold it would not show so perceptibly?

A. It would not.

Q. Wouldn't that depend upon the position of the face as to whether it lay square down or on its side? If a person were to fall with the front part of the body on the ground and face turned to one side, it would not affect the features of the face any, would it? It would not flatten the features by lying on the side?

A. Probably there would be some evidence of pressure above the ear or cheek.

Q. Then it would depend large' upon the position of the arms, would it not?

A. Yes, sir.

Q. If a person should fall so that one arm would fall in front of them it would prevent the head from pressing so hard upon the soil, would it not?

A. I think so.

Q. Can you pretend to swear positively whether that body ever lay on its face after receiving those wounds?

A. I think I can.

Q. You give that as your opinion?

A. Yes, sir.

Q. You left the blood on the face, didn't wash it, and covered it up, and didn't look at it any more after you made your examination?

637 A. I looked at it carefully after I removed it to the saloon.

Q. After you covered it up?

A. No, sir.

Q. Did you examine the body at any time after it was stripped and washed and cleaned?

A. No, sir.

Q. Your examination was made first outdoors with a poor lantern and afterwards in the saloon?

A. Yes, sir.

Q. Without washing it or removing any blood from the face?

A. Yes, sir.

Redirect examination by Judge HOWAT:

Q. The light was good inside, wasn't it?

A. Yes, sir.

Q. You saw the remains after daylight?

A. I didn't examine the face after daylight?

Q. Did you think it was possible that woman had fallen down there on her face and bled as profusely as the ground indicated without showing evidences of it upon her clothing or her face, of soil?

A. Dirt?

Q. Yes.

A. I don't think it was possible.

Q. Where was the soil upon the knee?

A. Over the *potella*—the knee cap.

Q. On her dress or drawers?

A. Drawers.

Q. Was there also dirt upon the tips of her shoes?

A. There was. Mud and dirt.

(Objection. Objection overruled. Exception.)

(Objection as having been testified to.)

Q. He asked you if you could state, positively, whether it had laid on its side. Did you see any indications of the body having laid on its side?

A. I did not.

638 Miss MINNIE NOBLE, recalled in rebuttal.

Q. When Annie Thiede came to you on Monday morning immediately preceding the time her mother was killed, what length of time did she say her father said she might remain with you?

A. One month.

Judge CHERRY. She didn't deny that. We ask that it be stricken out.

(Overruled. Exception.)

Cross-examination:

Q. Just tell what she said.

A. She came running down the path to meet me as I went to school that morning, and she said, Now we will have fun, Miss Noble, won't we? And I said, I don't know; why, my dear. And she said, I am going to stay a whole month with you; papa said I could, and I have brought my clothes, and he is coming to-morrow to pay the money for it.

639 WILLIAM MCQUEEN, recalled in rebuttal, testified:

By Judge HOWAT:

Q. You say, when you were there a week or so before the killing, you saw a knife on the lunch counter that was used to cut bread with?

A. Yes, sir.
Q. Look at that knife.
(Objection, as not rebuttal.)
Q. Is that the knife you saw there, used for that purpose?
A. It is not.
Q. In what respect is it different?
A. It has a different shape and a different colored handle. It is longer.
(Objection, as incompetent, immaterial, and irrelevant, and not rebuttal.)
The COURT. I think it is not necessary for any further description.
Q. Does that look anything like the knife?
A. No, sir.

Cross-examination:

Q. Did you ever examine this knife before it was handed to you just now?
A. Yes, sir.
Q. When did you examine it?
A. The first of May, I believe.
Q. Can you give a description of this knife now without looking at it?
A. Yes, sir; it is a common butcher knife, with a dark colored handle.
Q. Any brand on it?
A. There might be.
Q. Any marks of the manufacturer?
A. I never looked to see.
Q. This knife has been in your possession since May 1st, has it not?
A. It has been over there, wrapped up in a bundle, I believe.
640 Q. It has not been out of your possession?
A. You people have had it—you and Judge Howat.
Q. Before this trial, I mean?
A. I don't know that anybody has had it.

Redirect examination:

Q. The defendant says you struck him there before you put him under arrest that morning. How is that?
A. I didn't.
Judge CHERRY. I move now to strike out all the testimony given by the witness Minnie Noble, *and* immaterial, incompetent, irrelevant, hearsay, and not rebuttal.
Judge HOWAT. Counsel is the man that called it out.
(Motion overruled. Exception.)

641 Mrs. SODERHOLM, recalled.

By Judge HOWAT:

Judge CHERRY (to Interpreter Steele). *Q.* Have you talked to this witness about her evidence since she testified before?
A. Never a word.
The COURT. Mr. Steele was sworn as interpreter before.
A. Yes, sir.
Judge HOWAT (to witness). *Q.* You said about a year ago Annie Thiede came over to your house one night and you told about Mrs. Thiede being up in the attic. That is correct?
A. Yes.

Q. Did Annie Thiede, at that time when she came over for you, state that her father was whipping her mother, or words to that effect?

(Objection as hearsay and no foundation laid for the question as an impeaching question.)

Judge HOWAT. If there is any dispute about that I shall ask the privilege of recalling Annie Thiede and laying the foundation.

Judge CHERRY. We make another objection: it is immaterial and irrelevant, and even if she did, it is on a collateral question.

Judge HOWAT. It is a material question, whether the defendant and wife lived happily together or whether he abused her and illtreated her. Annie Thiede testified she never knew or saw her father illtreat her mother. It is simply for the purpose of impeaching Annie Thiede.

The COURT. My recollection is that the questions were asked, but if there is any doubt about it you may recall the witness.

Judge HOWAT. Recall Annie Thiede to lay the foundation for impeachment.

642 (Judge Cherry objects to that as error.)

Judge HOWAT. I want to recall her for the purpose of laying the foundation for impeachment. I called her attention to it, but the language I used may be somewhat different from what the witness may state and I ask now that privilege.

Judge CHERRY. We object.

Judge HOWAT. I asked her if she didn't run over there crying and state that her father was killing her mother, and if she didn't state soon afterwards that her father gave her mother a licking that night after she went home.

The COURT. You may recall the witness, Annie Thiede, simply for that purpose.

643 ANNIE THIEDE, recalled.

By Judge HOWAT:

Q. I asked you yesterday if you remember about going over to Mrs. Soderholm's about a year ago and telling them about your papa whipping your mamma and asking them to go with you. Do you remember me asking you that yesterday?

A. Yes, sir.

Q. I will ask you if you went over there by the bridge when your mother was up in the attic in the brewery? You said you didn't go over there, didn't you?

A. No, sir.

Q. You mean you didn't go over. Let me ask you, didn't you go over one night about a year ago to Mrs. Soderholm's, crying, and say to Mrs. Soderholm, Papa is crazy and whipping mamma, or words like that, words to that effect?

A. No, sir.

Q. Didn't you say to her next day after that, or some day soon after that, that your papa laid your mamma down or threw your mamma down that night, the night I have referred to, and whipped her, or words to that effect?

A. No, sir.

Judge CHERRY. I want the record to show that I object to the re-calling of this witness, for the reason she was on the witness stand in the cross-examination and gave her testimony on these very points, and afterwards the district attorney called this witness for the express purpose of asking her questions on rebuttal that he might introduce the witness to impeach—after both sides had closed their case—to impeach the testimony of Annie Thiede. We object, as not rebuttal, immaterial, incompetent, irrelevant, and hearsay.

Judge HOWAT. I wish the record to show that I didn't call her on rebuttal, but for further cross-examination.

644 Judge CHERRY. I wish the record to show it was after the prosecution had rested and after the defendant had rested.

(Objection overruled. Exception.)

(Judge Cherry asks that this testimony be stricken out.)

(Objection overruled. Exception.)

Mrs. SODERHOLM was recalled and examined in rebuttal by Judge Howat, as follows:

Q. You testified that about a year ago, as you recall it, Annie Thiede came to your house crying, and you went over by the bridge and beyond the bridge and saw Mrs. Thiede, or heard her, up in the attic of the brewery. Do you remember that?

(Objection, as leading, immaterial, irrelevant, and incompetent, and not rebuttal.)

(Objection overruled. Exception.)

A. Yes.

Q. Did Annie Thiede at that time say that her papa was crazy and whipping her mamma, or words to that effect?

A. Yes, sir.

Judge CHERRY. Same objection.

(Same ruling. Exception.)

Q. Did Annie Thiede next day after that, or a day soon after that, say to you that her papa threw her mamma down and gave her a whipping that night?

(Same objection, and as leading. Exception.)

A. Thiede pulled her down out of the attic and whipped her.

Q. Did Annie say that?

A. When she went to school in the morning.

Q. Did she state this to you in English?

645 A. She told it in English to this witness's daughter and to her, too.

Q. Do you understand English or not?

A. She could understand enough.

Q. Did you understand what Annie Thiede said?

A. Yes, sir; she understood that time.

(Judge Cherry asks the entire witness's testimony be stricken out, for the reason it is shown to be hearsay from her own statement, and for the reason it is incompetent, immaterial, irrelevant, and not rebuttal.)

(Motion overruled. Exception.)

Cross-examination by Judge CHERRY:

Q. Didn't you state on your first examination in this court that Annie Thiede came over there to your house that night, hunting for her mother?

A. No, sir.

Q. Can you give the exact language and the exact words Annie Thiede used when she first told you about what happened that night?

A. She said, Papa is crazy drunk, whipping ma.

Q. Ask her if she testified to that when she was on the witness stand before.

A. Yes, sir.

Q. Ask her if it is not a fact it was not over an hour before she went over to the bridge after Annie Thiede came, and if she didn't so testify.

A. Yes, sir.

Q. Ask where she saw Annie Thiede next day.

A. She was going to school and called for this witness's daughter.

Q. Ask if she asked Annie Thiede anything about where her mamma was the night before.

A. She asked how her mother was.

Q. Did she ask her in English or German?

A. She asked her, and her little daughter asked her also, and she said, mother was sick.

646 Q. Is that what Annie Thiede said?

A. Yes, sir.

Q. Is that all she said?

A. She said she also told that he took her down and whipped her.

Q. Ask if she went down to see Mrs. Thiede that day.

A. No, sir.

Q. Ask her if she has talked about this evidence since she was on the witness stand before.

A. No, sir.

Q. Ask her if she hadn't told anyone about this.

A. She didn't dare to say anything to anyone.

Q. Ask if she has not talked to Judge Howat, through an interpreter.

A. Yes, sir; yesterday.

Q. Then she has talked about this, has she?

A. She didn't talk it outside.

Q. Ask her if she didn't tell the interpreter of it so that Judge Howat would hear it.

A. No, sir.

Q. Ask who the interpreter was between her and Judge Howat.

A. A. H. Steele.

Q. When was that?

A. Yesterday.

Redirect examination:

Q. State whether you were up in my office about the time this case commenced and told me the same thing up there one night, through an interpreter.

A. Not altogether; didn't tell it all.

Q. You and a number of other witnesses were up there one night with an interpreter?

A. Yes, sir.

(Prosecution rests.)

Judge HOWAT. The record may show the knife, axe, and stick were introduced in evidence; also the note the doctor wrote.

The court gave the customary instruction to the jury and adjourned till 2.00 p. m.

646½ The above and foregoing contains all the evidence given on said trial on behalf of the people and all of the evidence given on behalf of the defendant.

647 When Mr. Nye opened for the prosecution Judge Cherry objected, on the ground that he was not present on one day of the trial, Monday, and that it was the duty of the district attorney to open the case, to make the opening argument, and review the evidence for the people.

Mr. NYE. The reporter read me almost all of the evidence taken on last Monday.

The COURT. It has not been the practice of this court to interfere with the arrangements of counsel.

Judge CHERRY. I take an exception.

648 SATURDAY EVENING, 10.00 P. M., *October 20th*, 1894.

The court charged the jury as follows:

Gentlemen of the jury, in this case the people of the Territory of Utah are plaintiffs and Charles Thiede is the defendant.

The defendant, Charles Thiede, was indicted by the grand jury of this judicial district for the crime of murder in the first degree. It is charged in the indictment that on the 30th day of April, in the year 1894, and within this judicial district, the defendant did willfully, deliberately, premeditatedly, and of his malice aforethought, and with the specific intent to take the life of Mary Thiede, assault her with a knife or other sharp instrument by cutting her throat; and that he thereby inflicted upon the body of the said Mary Thiede a mortal wound, from which she then and there died. The offense is more particularly described in the indictment which has been read to you by the clerk of this court.

To this indictment the defendant entered the plea of "not guilty."

The law of this Territory defines murder as the unlawful killing of a human being, with malice aforethought. You will notice the elements which constitute this crime: First, the being killed must be a human being; second, the killing must be unlawful; and third, the killing must be done with malice aforethought.

649 In every case of this character within this Territory, before a conviction is warranted, the evidence must show, beyond a reasonable doubt, that all these elements exist.

The court charges you that in every case of homicide the killing is unlawful when it is not excusable or justifiable; the killing is malicious and is done with malice aforethought when it is done unlawfully and with the specific intent to kill previously and deliberately formed on the part of the person killing.

The term malice denotes a wicked intention of the mind; an act done with a depraved mind attendant with circumstances which indicate a will-

ful disregard of the rights or safety of others indicates malice. Malice aforethought is such wicked intention of the mind previously entertained.

Malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take the life of a fellow creature. Express malice is manifest when a person of sound mind deliberately and with a design previously formed kills another, and when an inward intention to do the fatal act is evidenced by external circumstances, as previous threats, lying in wait, anterior plots, and attempts to do the person killed some bodily harm.

Malice is implied when no considerable provocation appears, as where one person willfully poisons another and no particular enmity can be proven, or where one suddenly kills another or assaults another and inflicts mortal wounds upon him, which produce death, and no considerable provocation is apparent, or where the killing is neither justifiable or
650 excusable, nor the provocation sufficient to reduce the crime to manslaughter; and no words or gestures merely, however aggravated, or affront, is a sufficient provocation to excuse or extenuate acts of violence which manifestly endanger the life of another; nor unless the provocation is such as would overcome the reason and discretion of a reasonable and prudent man.

Malice is also implied when the circumstances attending the killing show an abandoned or malignant heart, as where one coolly discharges a gun at a crowd of people, or deliberately, without cause, inflicts a mortal wound upon the person of another with a knife, or where one attempts to commit some other felony and unintentionally kills a person, because the law transfers the previous felonious intent to the killing. In such cases the intention may be inferred from the acts, because they evidence an abandoned and malignant heart.

In the case at bar the charge is murder in the first degree. This charge also includes murder in the second degree and voluntary manslaughter.

The court charges you that under the law of this Territory every murder perpetrated by poison (but of this there is no evidence in this case) or by lying in wait is murder in the first degree. In the same degree is every kind of willful, deliberate, malicious, and premeditated killing of a human being, as where a person of sound mind, with intent to kill previously formed, deliberately stabs or cuts another so that death ensues, or where one with concerted scheme draws another into a quarrel and then
651 kills him, or where a person of sound memory and discretion designedly takes deliberate aim, shoots at, and kills another; these and the like are instances of murder in the first degree. It may also be committed in the perpetration or attempt to perpetrate any arson, rape, burglary, or robbery (but of these there is no evidence in this case), or it may be perpetrated from a premeditated design unlawfully and maliciously to effect the death of any other human being other than him who is killed. While, however, the law requires that the killing, in order to constitute murder in the first degree, must be perpetrated from a premeditated design with a specific intent to take life, still it does not require that such premeditated design shall exist in the mind of the perpetrator for any fixed period of time before the doing of the act which constitutes the crime. If there was such design and determination to kill deliberately formed in the mind at any moment before the fatal act was done, it is sufficient, and if

the jury believe from the evidence in this case beyond a reasonable doubt that the defendant, Charles Thiede, with knife or other sharp instrument in hand, cut the throat of the said Mary Thiede and killed her, and if you further believe from the evidence beyond a reasonable doubt that when he inflicted the mortal wound—if he did inflict it—he had formed in his mind a deliberate and premeditated design to unlawfully and maliciously take the life of the deceased, and that in furtherance of such design he did cut her throat and kill her, as charged in the indictment, then such killing is murder in the first degree.

652 The court further charges you that under the law of this Territory any other homicide than such as I have already explained to you committed under such circumstance as would have constituted murder at the common law is murder in the second degree. Murder at common law includes both murder in the first and second degrees under our Territorial law. Murder in the second degree constitutes that class of homicides wherein the specific intent previously formed to take the life of another unlawfully is wanting. That is, if a person of sedate mind and discretion kills another unlawfully, and such killing is accompanied with malice aforethought and is not the result of deliberation or premeditation, then such killing is murder in the second degree. Malice aforethought is an indespensable element of the crime of murder in the second degree. There must be sufficient thought to form an intention to do the unlawful act, although there is no specific intention to actually kill, and yet such intention to do the unlawful act must have been formed without deliberation; where a person with intention thus formed kills another, and such killing is neither excusable nor justifiable, it is murder in the second degree.

The court further charges you that manslaughter is the unlawful killing of a human being without malice. It may be either voluntary or involuntary. When the offense is committed upon a sudden quarrel or heat of passion it is voluntary manslaughter; that is to say, if a person

653 without malice, upon a sudden quarrel or in the heat of passion, inflicts upon the person of another an injury from which death ensues, it is voluntary manslaughter, but if the person inflicting the injury did the act deliberately, and with the intention to do great bodily harm to the person killed, then the act was malicious, and the person inflicting the injury from which death resulted is guilty of murder.

The court further charges you that before you can convict the defendant of any one of the offenses included in the charge in this case and explained to you in these instructions, you must be convinced of his guilt by the evidence beyond a reasonable doubt.

I do not deem it necessary to instruct you as to the law relating to involuntary manslaughter, because of this there is no evidence in this case; nor do I deem it necessary to instruct you as to excusable or justifiable homicide, for under the plea of "not guilty" the defendant in this case does not rely upon the law of excusable homicide, nor does he rely upon the law of justifiable homicide. He does not claim that the act of violence which killed the deceased was excusable or justifiable, but he does claim that he did not commit the fatal act, and that he is innocent of the crime charged against him. The defendant thus avers (as he has a right to do) that he is not the person who inflicted the fatal wound and killed the

deceased, and the burden of proof in this case devolves upon the
654 prosecution, and it is incumbent upon it to establish the defendant's guilt by competent evidence beyond a reasonable doubt, or else he will be entitled to an acquittal. If, however, you believe from all the evidence beyond a reasonable doubt that the defendant committed the assault and inflicted the wounds which killed the deceased willfully, deliberately, maliciously, premeditatedly, and with the design to kill, then he is guilty of murder in the first degree.

The court further charges you that in a criminal action the defendant is by law presumed to be innocent until he is proven guilty, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal; that is to say, unless the evidence produced and admitted on the trial before you establishes his guilt beyond a reasonable doubt, he must be acquitted.

The law also presumes that a person has a good character until the contrary is shown by the evidence, and the jury have no right to consider the omission on the part of the defendant in a criminal action to introduce evidence of good character as a circumstance against him.

It is not necessary to a conviction that a motive should appear for the commission of a crime, but, as crime is usually committed from some motive, it is proper, in determining whether the defendant is guilty or not, to inquire whether he had a motive for the killing of his wife. If you find that he had such motive you should consider that fact, and if you do not find that he had any such motive, you should consider that fact.

655 Where evidence is given tending to show admissions made by the defendant in a criminal case he is entitled to have the whole of the statement or admission considered by the jury, but you are not obliged to believe or disbelieve all of such statement. You may disregard such parts of it, if any, as are inconsistent with the other testimony, or which you believe from the facts and circumstances proved on the trial are untrue. It is claimed by the prosecution that the defendant admitted to the witness William McQueen, in the presence of the witness John Montgomery, that he killed his wife. The confessions of a defendant made out of court are always proper for the consideration of the jury in determining whether the defendant is guilty or not. Such confessions should be treated and considered by the jury precisely as you would any other evidence.

If you find in this case that the defendant admitted to the witness William McQueen that he killed his wife, you have a right to take that into consideration and give it such weight as you think it entitled to receive, giving due consideration and regard to the circumstances under which it was made, and to the condition of the defendant at the time he made the same, if you find that he did make such confession.

You should fairly and impartially consider this case in the light of all the evidence, and you should not allow any rumor or expressions of opinion you may have heard or read out of court to influence your verdict.

656 If you find that the accused, after his wife was killed, made false or contradictory statements in regard to the crime, then in determining the guilt or innocence of the defendant you should take into consideration the circumstances under which they were made, and determine

whether they should be attributed to the defendant's guilt and his desire to conceal the same, or arose from any other cause consistent with his innocence.

If there is any fact or element necessary to constitute the crime charged against the defendant, proved to the satisfaction of the jury by a preponderance of the evidence, which is inconsistent with the defendant's guilt, then you can not convict him. If, after you have considered all the evidence in this case fairly and impartially, and after having consulted with each other as to what your verdict should be, you can not all agree on a verdict, or if, after such consideration of all the evidence and after such consultation any juror entertains a reasonable doubt of the defendant's guilt, then you can not find him guilty.

The term reasonable doubt, however, as used in these instructions does not mean mere possible or imaginary doubt, because in human affairs everything depending on evidence is open to some possible or imaginary doubt; nor is it a doubt arising from mere caprice or groundless conjecture. A doubt to justify an acquittal must be reasonable and arise from a candid and impartial consideration of all the evidence admitted in the case, and then it must be such a doubt as would cause a reasonable, prudent,
657 and considerate man to hesitate and pause before acting in the graver and more important affairs of life.

If, after a careful and impartial consideration of all the evidence in the case, you can say and feel that you have an abiding conviction of the guilt of the defendant, and are fully satisfied of the truth of the charge, then you are satisfied beyond a reasonable doubt. It is your duty to consider all the evidence admitted on the trial, and in doing so you should entertain such doubts only as arise from the evidence and as you are able to find in the evidence a reason for.

In the case at bar the prosecution relies on circumstantial evidence, and as to that the court charges you that while you must be convinced from the evidence admitted on the trial that the defendant is guilty beyond a reasonable doubt in order to warrant a conviction, still the proof need not be the direct evidence of persons who saw the offense committed. The acts constituting the crime may be proved by circumstances. Circumstantial evidence in criminal cases is competent and is of the same force and effect as any other evidence, provided the facts and circumstances are of such a character as to satisfy the minds of the jury beyond a reasonable doubt that the defendant is guilty. This kind of evidence is the proof of such facts and circumstances connected with or surrounding the perpetration of the crime charged as tend to show the guilt or innocence of the person accused, and if these facts and circumstances are sufficient to satisfy the minds of the jury of the guilt of the defendant beyond a rea-
658 sonable doubt, then such evidence is sufficient to authorize a conviction; but if such facts and circumstances are capable of explanation upon any other reasonable hypothesis than that the defendant is guilty, then such evidence will not warrant a conviction.

The court further charges you that the law requiring the jury to be satisfied of the defendant's guilt beyond a reasonable doubt in order to warrant a conviction does not require that you should be satisfied beyond a reasonable doubt of each link in the chain of circumstances relied upon to

establish the guilt of the defendant. It is sufficient if, taking the testimony all together, you are satisfied beyond a reasonable doubt that the defendant is guilty.

The court further charges you that if, after a fair and impartial consideration and comparison of all the evidence admitted in the case you should believe the defendant to be guilty, then in determining the question whether his guilt amounts to murder in the first degree or to murder in the second degree or to voluntary manslaughter you have a right to take into consideration the nature of the assault made upon the deceased so far as shown in the evidence, the kind of instrument used to inflict the mortal wound, if shown; the *the* time when and the place where the fatal act was done, if shown; the character of the wound which killed the deceased, if shown; the circumstances connected with and surrounding the perpetration of the crime so far as they appear in evidence, and
659 the relations of the deceased with the defendant, and the other facts and circumstances as shown by the evidence which tend to show the defendant's guilt or innocence.

The court further charges you that if there is any conflict in the evidence it is your duty to reconcile it if you can upon any hypothesis reasonably consistent with the innocence of the defendant and to acquit him if you can so reconcile them.

The court further charges you that you are the exclusive judges of the facts in this case and of the credibility of the witnesses, and in determining upon their credibility you are to exercise your best judgment, based on your experience in life as business men and your knowledge of the motives which influence persons in their statements. You have a right to take into consideration the conduct and bearing of the witnesses while testifying before you, their intelligence and means of observation, their ages and opportunities to know and capability to recollect and to state the facts to which they testify, and the reasonableness or unreasonableness of their statements, considered in the light of all of the evidence admitted on the trial, and also to take into consideration any fact in evidence which affects the credibility of any witness. You are also the exclusive judges of the weight and effect of the evidence, and the court charges you that in judging of its weight you must consider all the evidence which was produced and admitted before you on the trial. And you can not go outside of such evidence or assume facts
660 not proven, nor can you consider the statements of counsel as to what the evidence is, unless they state it correctly; but you have a right in your investigations for the purpose of determining this question to take into consideration the apparent consistency, fairness, and congruity of the evidence, the opportunities of the several witnesses to see and know the facts about which they have testified, their manner and bearing while testifying before you, their interest or lack of interest, if any has been shown, in the result of the trial, their prejudices and bias, if any has been shown, and the probability or improbability of the truth of their statements in view of all the other evidence, facts, and circumstances proved on the trial.

The court further charges you that it will not necessarily follow that a witness is corrupt or that his testimony is to be entirely discredited because he has been shown to have been mistaken as to a particular fact. A witness may be honestly mistaken as to a particular fact and yet as a whole his evidence be entitled to credit; and even if you are satisfied that

a witness has intentionally testified to that which is false, you can give credit to such portions of his testimony as you find to be corroborated by other reliable evidence in the case. If, however, you find that the witness has testified falsely as to material matters, either knowingly & intentionally, or on account of having a defective & unreliable memory, you should receive and act upon his testimony with caution, and you
661 may discard it altogether, for it is strictly within your province to give to it only such weight and credit as you in your judgment believe it entitled to receive. You have no right to give undue weight to the testimony of any particular witness or to any particular fact in evidence. It is your duty to consider the evidence altogether fairly, impartially, and conscientiously. If, after you have thus considered all the evidence admitted on the trial, you have a reasonable doubt, as explained to you in these instructions, of the defendant's guilt, then you must acquit him; but if, after such consideration of the evidence, you have no such doubt, then it is your duty to find him guilty, and in that event our statute provides that every person guilty of murder in the first degree shall suffer death, or, upon the recommendation of the jury, may be imprisoned at hard labor in the penitentiary for life. Hence in this case if you find the defendant guilty of murder in the first degree you may, if you think it a proper case in which to do so, recommend that he be imprisoned at hard labor in the penitentiary. If you find the defendant guilty of murder in the second degree, you will so state in your verdict; if you find the defendant guilty of voluntary manslaughter, you will so state in your verdict, and if you find the defendant "not guilty," you will so state in your verdict.

The foregoing is all the instructions given to the jury by the court in said case.

662 Judge CHERRY. The defendant excepts to the refusal of the court to give the instructions requested by the defendant, being numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, and 21. Further, the defendant excepts to the giving of the instructions to the jury on the definition of the word "malice" and application to this case, as being misleading, confusing, and not correctly stating the law as applicable to this case and tending to influence the jury to find a verdict not justified by the evidence in this case.

The defendant excepts to the giving of the instruction of the court to the jury on the question of murder in the second degree, as not being justified by the evidence and tending to mislead and confuse the jury and cause them to render a verdict not sustained by the evidence in this case.

The defendant excepts to the instruction of the court to the jury in defining deliberation, that the same does not properly and legally define the meaning of the words used in the indictment in this case.

The defendant excepts to the instruction of the court to the jury in the definition and meaning of premeditation, as misleading and not correct as charged in the indictment in this case.

663 After the jury retired.

Judge CHERRY. The defendant now enters an objection and exception to the action of the court in permitting the juror Louis Gronosky to act and serve as interpreter for the witnesses Jacob Lauenberger

and Mary Lauenberger during the progress of this trial, as shown by the record. The defendant consented reluctantly to the said juror acting as interpreter. That said juror was first asked by the district attorney if he would consent to so act, and that defendant's counsel was then asked by the district attorney and by the court if defendant would consent. That both of said requests were made in the presence of the juror Louis Gronosky and in the presence of the jury, and that thereupon said defendant consented that said juror might so act.

Judge HOWAT. It is not true that you consented reluctantly.

Judge CHERRY. I will strike out the word "reluctantly," as perhaps a conclusion.

Judge HOWAT. The statement should also embody the fact that the juror Louis Gronosky stated the interpreter was not stating the evidence correctly, and he was asked if he understood the witness fully, and he stated that he did, and the district attorney thereupon asked the defendant and his counsel if they consented that the juror act as interpreter, and they thereupon said they consented.

Judge CHERRY. I will consent to that, excepting the repetition.

664 FRIDAY MORNING, *November second*, 1894.

Judge CHERRY. If the court please, I desire at this time to ask leave to save my exceptions to the instructions of the court. I am aware that I ask this with perhaps a deviation from the former practice that has been adopted by this court, that the attorneys are expected to save all their exceptions before the jury retire or before the case is closed, so that the court may have an opportunity to correct them, but the court knows in this case I asked the court to give us a copy of the instructions the court intended to give in writing, and the court remembers we had several talks about it, and the court thought he was pressed for time and couldn't do it and rather intimated I would have to let it go, and I believe the court gave me part of it, but not all of it. I would like to save exceptions to two or three instructions on the record at this time. Let the record show I ask it at this time. Have you any objections, Judge Howat?

Judge HOWAT. I don't know what counsel is going to ask.

Judge CHERRY. I want the record to show I am not saving them for the motion for a new trial, but before I enter upon the motion for a new trial. I desire to save my exceptions to that part of the court's instructions pertaining to the confession. I except to giving that instruction instead of mine. I desire to save my exceptions to the entire charge of the court on the definition of the term "reasonable doubt" and to the instructions of the court given as follows: "It is your duty to con-

665 sider all the facts in evidence admitted on the trial, and in doing so you should entertain such doubts only as arise from the evidence and as you are able to find in the evidence a reason for." We desire to except to the instructions of the court given to the jury on the question of circumstantial evidence, and we desire to except to this instruction: "The court further charges you that the law requiring the jury to be satisfied of the defendant's guilt beyond a reasonable doubt, in order to warrant a conviction, does not require that you should be satisfied beyond a reasonable doubt of each link in the chain of circumstances relied upon to establish

the guilt of the defendant. It is sufficient if, taking the testimony all together, you are satisfied beyond a reasonable doubt that the defendant is guilty."

Judge HOWAT. Let the record show that counsel asks these exceptions November 2nd, 1894.

The COURT. The court will make no ruling on them.

666 That thereafter and on the 21st day of October, 1894, the jury returned the following verdict:

In the district court of the third judicial district, Territory of Utah, county of Salt Lake.

THE PEOPLE OF THE TERRITORY OF UTAH, plaintiff,
against
CHARLES THIEDE, DEFENDANT.

Verdict.

We, the jurors, impaneled in the above case, find the defendant, Charles Thiede, guilty of murder in the first degree, as charged in the indictment.

Dated Oct. 21st, 1894.

A. R. CARTER, *Foreman.*

Filed Oct. 21st, 1894. David C. Dunbar, clerk. By Geo. D. Loomis, deputy clerk.

667 That thereafter and on the 2nd day of November, 1894, the defendant filed his motion to set aside the verdict in said cause and for a new trial, in words as follows, to wit:

668 In the third district court of the Territory of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH
against
CHARLES THIEDE, DEFENDANT.

Motion for a new trial.

Now comes the defendant in his own proper person and by his attorneys, Cherry & Cherry, and moves the court to set aside the verdict of the jury heretofore rendered in this cause, and for a new trial, for the following reasons:

1st. Irregularity in the proceedings of the court by which the defendant was prevented from having a fair trial.

2nd. Insufficiency of the evidence to justify the verdict; and that the verdict is contrary to the evidence and the law given in the cause.

3rd. Errors of law occurring at the trial, and duly excepted to by the defendant.

CHERRY & CHERRY,
Attorneys for Defendant, Charles Thiede.

669 Said motion for a new trial was argued and heard by said court on the 2ond day of November, 1894, and on Nov. 5, 1894, was overruled by said court, to which decision of the court the defendant then and there excepted.

That on the 2ond day of November, 1894, the defendant filed his motion in arrest of judgment, in words as follows, viz:

670 In the third district court of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH
against
CHARLES THIEDE, DEFENDANT.

Motion in arrest of judgment.

Now comes the defendant by his attorneys, Cherry & Cherry, and moves the court to arrest the judgment in this cause for the following reason:

That during a portion of the time of the trial of said defendant he did not have a constitutional jury in the box; that the juror Lewis Gronosky was permitted by the court to be sworn and to act as interpreter four times for two of the witnesses for the people; that during the time said juror was so acting there were but eleven jurors to act in said cause, as shown by the records in this cause.

CHERRY & CHERRY,
Attorneys for Defendant, Charles Thiede.

671 Said motion in arrest of judgment was argued and heard by the court on the 2ond day of November, 1894, and on Nov. 5, 1894, by the court overruled, to which decision of the court the defendant then and there excepted.

That thereupon the court passed sentence and judgment on the defendant.

That the defendant's motion for a new trial and in arrest of judgment were filed at the same time and argued together, and that upon the hearing of the same the following affidavit by Andrew Howat was filed:

Territory of Utah, in the third district court.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES THIEDE.

TERRITORY OF UTAH, *County of Salt Lake, ss:*

I, Andrew Howat, being duly sworn, say: That I was one of the attorneys for the plaintiff on the trial of the above-entitled cause; that upon the trial of said cause when the defendant's counsel stated in open court that the interpreter for the witness Jacob Lauenberger was not interpreting his testimony correctly, and the juror Gronosky had stated that he understood the witness fully, and I had asked him if he would act as interpreter and he said he would, I asked defendant's counsel, A. N. Cherry, privately, so as not to be heard by the jury or the court, whether he would consent that the juror Gronosky act as interpreter for the witness, and he

replied to me to make my statement openly to the court, and I thereupon openly asked the defendant's counsel if defendant consented that the juror Gronosky act as interpreter for the witness.

ANDREW HOWAT.

Subscribed and sworn to before me by said Andrew Howat this 2nd day of November, 1894.

[SEAL.] DAVID C. DUNBAR, *Clerk.*
By GEO. D. LOOMIS, *Depy.*

672 In the third district court of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH
against
CHARLES THIEDE, DEFENDANT. } Indictment for murder.

Certificate.

On the 21st day of December, 1894, the defendant, by his counsel, presented the foregoing as his bill of exceptions, and prayed that the same be signed, sealed, and made a part of the record in this cause.

Wherefore the court hereby certifies and settles the foregoing bill of exceptions and certifies that the same contains all of the evidence produced at the trial.

Thus done and settled this 21st day of December, 1894.

G. W. BARTCH, *Judge.*

673 In the supreme court of Utah Territory.—Regular January term.

SATURDAY, *February 23rd*, 1895.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES THIEDE, APPELLANT.

This cause coming on regularly to be heard, was argued by Mr. A. N. Cherry for the appellant, by Mr. Andrew Howatt in reply, was submitted and taken under advisement.

Bartch, J., did not sit at this hearing.

674 In the supreme court of Utah Territory.—Regular January term.

SATURDAY, *March* 16, 1895.

THE PEOPLE OF THE TERRITORY OF UTAH
vs.
CHARLES THIEDE, APPELLANT.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, affirmed, and this cause is remanded to said district court with directions that the day be fixed for carrying the sentence therein rendered, in this cause, into effect.

675 In the supreme court of Utah Territory.

THE PEOPLE OF THE TERRITORY OF UTAH,
respondent,
vs.
CHARLES THIEDE, APPELLANT,

KING, J.:

The defendant, Charles Thiede, was indicted for the murder of his wife, and on the 21st day of October, 1894, was found guilty, and on the 5th of November, 1894, his motion for new trial and arrest of judgment was overruled and sentence of death was passed upon him. From the judgment and order overruling his motion, he appeals to this court. The record discloses numerous assignments of errors, and as defendant's counsel urged each one with ability and great earnestness, not only in his brief, but in his oral argument, and because of the importance of the case, we feel that the points presented demand careful consideration. We will not discuss the assignments in the order presented, but group them somewhat with reference to their chronological order in respect to the trial.

I.

It is claimed that the evidence is insufficient to justify the verdict, and that the verdict is contrary to the evidence and to the law, and that
676 the court erred in overruling defendant's motion for a new trial. This necessitates a brief review of the evidence produced upon the trial.

The undisputed testimony shows the following facts: The wife of the defendant was killed during the night of Monday, the 30th day of April, 1894. The defendant, about half past one or two o'clock in the morning, awakened Jacob Lauenberger and informed him that he had found his wife, with her throat cut, lying near the defendant's saloon. Upon examination by physicians of the wound upon the person of the deceased, it was found that the head had been almost severed from the body by a wound in the throat made by some sharp instrument; the wound extended inward to the vertebræ, which obstructed the further passage of the weapon; that from the character of the wound death was inevitable and immediate. It was highly improbable, if not impossible, according to the testimony of the physicians, that the wound could have been made with a pocket knife, and highly improbable that it was made with a razor, but was of such a nature as would be made with a large knife or similar instrument. The body of the deceased was found lying within three to five feet of the southeast corner of the defendant's saloon, and about thirty feet further east was a pool of blood, with evidence of a struggle, indicating that the deceased and her assailant had engaged in a struggle there, and that the deceased had received a serious, if not a fatal, wound at that place; and from that point to where the body lay there were blood marks and another pool of blood where the body lay. The defendant was in or near the saloon during the night until he went with the witness Lauenberger to Murray for a physician, and the saloon was lighted during the whole of the night. The defendant had blood upon his hands, and there was blood upon his clothing. The defendant, when he awakened Lauen-

berger and thereafter when going for a physician and after his
677 return, made manifestations of grief at the loss of his wife.

The defendant and his wife were about thirty-three years of age, and for several years prior to her death the husband had slept at his saloon and his wife and her child, about ten years of age, at the dwelling house a short distance from the saloon.

A number of witnesses testified that the defendant ill treated his wife, and the course of treatment had continued for a number of years; and one witness testified that the defendant, about four months prior to the death of his wife, had expressed a desire to get rid of his wife, saying that she was too good for his business. The defendant was a witness in his own behalf, and denied the ill treatment, and denied that he had expressed a desire to get rid of his wife; and there were other witnesses introduced by the defendant whose testimony tended to corroborate the defendant and contradict the testimony of some of the witnesses for the prosecution. We do not deem it necessary to review all the evidence on this point, but there certainly was sufficient evidence to warrant the jury in coming to the conclusion that the defendant and his wife had lived unhappily for years, and that the defendant had frequently abused and ill treated his wife, and that without any excuse so far as the evidence discloses.

The testimony on behalf of the prosecution shows that on Sunday evening preceding the murder the defendant and his wife had quarreled in the garden after dark; that they were called into the house of the witness Lauenberger; that when there the defendant slapped his wife in the face and ordered her to go home, and that she refused to go, giving as a reason that if she went home the defendant would murder her that night; that
soon thereafter she left Lauenberger's house, and the defendant and
678 his child and the witness Lauenberger went to defendant's saloon; that while there the defendant's wife sought admittance to the saloon, which was denied by the defendant; that the defendant and his child slept in the saloon that night; that about this time the defendant' wife went to the house of a neighbor, crying and apparently afraid; that about ten o'clock that night she was seen on the public highway a short distance from the saloon, as if hiding and alarmed. On Monday morning the child went to school and was told to go home with the teacher, and she remained with her Monday night.

The last seen of the defendant's wife by any witness other than the defendant was about ten o'clock Monday evening, when she was seen sitting outside of the saloon of the defendant. During the night, about one o'clock, the defendant aroused the witness Lauenberger and informed him that his wife had been killed. The night was very dark. Dr. Ferrebee, the physician called, testified that he was close to the body before he could discern anything, and had to touch it before he knew it was a human body. The witness Lauenberger testified that before going for a doctor or alarming any one else than himself and wife the defendant took a light and scanned the outside of the south door of the saloon and the side of the building adjacent thereto, as if looking for something upon the door and wall; that fresh spots of blood were found upon the outside of the door next day. Witnesses testified that the defendant said, when he found his wife lying upon the ground, that she said, "Oh, Charley!" while the only medical witnesses in the case all agreed that it was impossible for the

deceased to speak or articulate after the wound was inflicted. One or two witnesses testified that after their return to the saloon with the doctor, and after the body of his wife had been carried into the saloon, the defendant was gone several times from the saloon before daylight, remaining at one time as long as twenty minutes. It was testified that a
679 large knife used by the defendant in the saloon was missing and could not be found, and it was testified to by the sheriff and his deputy that on the morning after the murder, when they went there, the defendant stated to the sheriff that he had killed his wife during the night. The defendant testified that when he found his wife lying upon the ground he undertook to lift her up, and so got the blood upon his hands and clothing; that when he undertook to raise her a sound was made like "Oh, Charley!" and that that was what he said to the witnesses who testified that he said his wife said "Oh, Charley!" He denies that he made the statement to the sheriff that he killed his wife, and says that what he said was, "They killed my wife."

The only question upon this branch of the case for us to determine is whether there is evidence in the record sufficient to support the verdict. It was for the jury to say whether they believed the testimony of the witnesses, and what weight they should give to the testimony of the witnesses for the prosecution and for the defense, and to the testimony of the defendant himself.

There is certainly nothing in the record that would warrant us in saying that the jury should not have believed the testimony of the witnesses for the prosecution. There can be no doubt but that the defendant's wife was murdered, and while the evidence was largely circumstantial, it certainly was sufficient to warrant the jury in finding that the defendant was the person who committed the crime.

It appears from the evidence that a large number of men, belonging to what was known as the "industrial army," were camped less than a mile from the defendant's saloon, and it is claimed that there were many lawless men among them, and that their presence was sufficient to raise a doubt as to who committed the crime. But it is not shown that any of these men were near the saloon of the defendant that night before the murder, or were in any way connected with the crime, and the
680 absence of motive and the improbability of any of these men carrying upon his person a weapon such as would be likely to inflict such a wound, or committing such a crime within a few feet of a lighted building, and the likelihood that the defendant would have heard his wife's screams if anybody else had committed the murder, were matters for the consideration of the jury, and they could very properly say that under the circumstances the presence of these men in the neighborhood did not relieve the defendant from the effect of the evidence against him, but that the presence of these men furnished him with an opportunity to take his wife's life and throw suspicion upon others than himself.

II.

It is insisted that the court erred in admitting incompetent, irrelevant, immaterial, and hearsay evidence:

a. In permitting certain witnesses to testify to hearing deceased scream upon numerous occasions; to seeing bruises upon her face and body; to

seeing her cry upon several occasions, and to observing her when she appeared alarmed and frightened, without connecting the defendant with the circumstances or the alleged acts of cruelty towards the deceased. It is conceded by defendant's counsel that "in cases of marital homicide ill treatment and abuse by the husband to his wife may be shown in a general way for the purpose of proving malice or motive, but it is incompetent for any other purpose."

It is evident from the record that the sole purpose for which this testimony was offered was to show defendant's malice towards his wife and point out the motive for the homicide. Psychic phenomena so often appear that scientists some time despair in their efforts to trace ordinary and natural sequence in mental concepts; still the accepted rule
681 must be that motive underlies human action. Uxoricide is unnatural; when it is charged, the first question suggested is, What motive inspired the deed? It is a most material question to be determined. If no reason or motive is found, one is loath to believe even positive and direct evidence incriminating the spouse. In the case at bar evidence of kindness and affection towards the deceased exhibited by the defendant would have been material and would have proven of great weight in his behalf; conversely, cruel treatment and evidence of hatred and ill will would prove very strongly against him.

Various witnesses testified to maltreatment and circumstances from which the prosecution sought to draw inferences that defendant's treatment of his wife was cruel and inhuman. Was the defendant sufficiently connected with these acts and circumstances?

The undisputed evidence was that defendant for years had not slept at home or with his wife; she had no relations in this country; was alone with her husband and their ten-year-old daughter. Mr. Soderholm testified that about four years prior to the homicide he had resided within a few yards of the defendant's saloon and home; that shortly after taking up his residence there he saw the deceased one morning running from her home followed by defendant. She was screaming and attempting to escape from her husband. While so doing defendant caught her, threw her down violently upon the ground, and kicked her and dragged her by the hair of her head. Witness interfered and defendant then ceased. He also testified that very often, as frequently as once a week, from that time to the time of her death, he had heard Mrs. Thiede crying and screaming at her home and the saloon when her husband would be there; that he
682 had seen her after dark hiding near her home when she appeared greatly frightened and agitated. Her face was always bruised and often bloody; before it had time to heal up it showed signs of renewed external violence. Mrs. Soderholm testified that about three and a half years before the trial she saw defendant beat his wife with a stick, and in October or November, 1893, about midnight, deceased's little girl ran to her home and conveyed certain information, as a result of which witness and her daughter went to defendant's brewery, a short distance from his home and saloon. There they discerned deceased in the attic of the brewery thinly clad. The night was very cold. She was softly crying to her daughter. Defendant was near, and when the witness and her daughter approached he drove them away, threatening to shoot them. She also testified to seeing deceased hiding about three hundred feet

away from the saloon one night when defendant was there. She was crying and wringing her hands and appeared to be greatly distressed. The witness further stated that she saw defendant chase his wife almost daily, and nearly every night when he was at home or at the saloon she could hear Mrs. Thiede screaming. The witness resided but a short distance from the saloon, described by her on the stand as being twice the length of the room in which the trial was being conducted.

Mrs. Anderson, whose residence was very near the defendant's, testified to having seen bruises upon the deceased, and hearing screams from her home late at night, and about midnight upon one occasion she heard defendant and deceased near the saloon and the latter was screaming. She also saw Mrs. Thiede the night preceding the homicide hiding near her home.

Jacob Lauenberger and his wife testified that the evening before Mrs. Thiede's death, and before the time when Mrs. Anderson saw her hiding, she and the defendant had a quarrel in the garden adjoining
683 Lauenberger's home. Mr. Lauenberger invited the deceased into his house, hoping to terminate the quarrel. The invitation was accepted, but defendant followed his wife into the house, and there struck her in the face two or three times and insisted upon her going home. She refused, saying, "You will kill me to-night if I go home."

James Gilbert testified that about sundown on the evening that Mrs. Thiede was killed he was near defendant's saloon and saw Mrs. Thiede run out of the saloon looking very greatly alarmed and excited and was followed by her husband. Other witnesses gave similar testimony to that given by the witnesses above named.

We think the objections to this testimony were properly overruled. The evidence shows that no person other than the defendant was in a position to have inflicted the injuries described upon the deceased; besides defendant is clearly and definitely identified with the bruises and maltreatment to which deceased was subjected. It was the province of the jury to pass upon and weigh the evidence introduced by the prosecution showing ill treatment; but the court passing upon the admissibility of the testimony offered to show the injuries and bruises upon defendant's wife had to assume that the testimony was true. Counsel cites several cases in support of his contention upon this point, but aside from the case of the Territory vs. Armejo, 37 Pac. Rep., 1113, they have no application whatever to the case at bar. In the case of the State vs. Ling, 18 Pa. Rep., 844, there was not the slightest evidence connecting the defendant with the homicide or previous circumstances from which it might be inferred that malice was entertained by some persons towards the deceased. State vs. Weaver, 11 N. W., 675, is cited. There two persons were jointly indicted for murder, and the court held that it was incompetent
684 upon the separate trial of one to show threats made by the other several months before the crime was committed, in the absence of any evidence tending to show a conspiracy or any concert of feeling or action prior to the conflict resulting in the murder. The evidence in the case of McBride vs. People, 37 Pac. Rep. 953, showed that the deceased and her husband engaged in frequent drunken carousals, but failed to show the cause of her death. The corpus delicti was not proven. As the court say: "In their periodical drunken conflicts, she was undoubtedly

the victim of violence and abuse. The external injuries, if inflicted by him, may have affected more or less a person in a prostrate condition, but there was an utter lack of evidence that they caused death, and as to how they were received is left equally in doubt."

The case of the Territory vs. Armejo, supra, was strongly relied upon in the oral argument as completely vindicating defendant's position upon this question. It is not necessary to enter into a discussion of that case. It is sufficient to say that while we do not fully assent to all the reasoning of the court, and to all the conclusions reached, yet is clearly distinguishable from this case and does not announce a different rule of evidence than that which governed the trial court in the case at bar, and which we uphold.

b. In permitting Dr. Benedict to testify that the defendant was a strong man. The evidence was that *that* deceased's head was nearly severed from her body, and that one stroke of the instrument employed had accomplished this. The witness was acquainted with the defendant, and knew him to be possessed of great physical strength. Such a stroke, it was contended by the prosecution, could only have been made by a person possessing immense strength. While there are many strong men,
685 yet in view of the nature of the wound, and the expert testimony relative to the manner in which it was inflicted, we think it was a circumstance, the value of which, slight though it was, the jury were entitled to. Such testimony might be not only relevant but very material if the homicide had been committed at a time and place when only one strong person was in the neighborhood. Its importance diminishes in proportion to the increased number of strong persons in the vicinity at the time of the homicide.

c. In permitting the witness Montgomery to give his opinion as to how certain blood stains were occasioned. Counsel claims that he was not an expert and therefore his testimony was incompetent. The record shows that no objection was offered, and no exception at any time was taken; but even if there had been, we think it would not have been error. A person not an expert is competent to testify that certain stains resembled blood; that the stains were blood; that certain hairs were human, and that a person was intoxicated. (Thomas vs. State, 67 Ga., 460; McLain vs. Com., 99 Pa. St., 86; People vs. Gonzales, 35 N. Y., 49; Com. vs. Dorsey, 103 Mass., 412; People vs. Hopt, 4 Utah, 252; People vs. Hopt, 120 U. S., 430.)

d. Appellant contends that it was error to permit the prosecution to recall defendant's witness, Annie Thiede, after the defense had rested. After the direct examination of the witness in which she stated that the defendant was kind to his wife, the district attorney cross-examined her, and asked her some questions with a view to showing defendant's cruelty towards the deceased. Rebutting testimony was offered by the prosecution and permission was asked of the court that this witness might be recalled for further cross-examination, and in order to lay a foundation for impeachment. Permission was given, and objection made by the defense upon the ground that it was incompetent, irrelevant, and immaterial, and not rebuttal. Witness was then asked if she had not at the time and place

686 designated made certain statements to Mrs. Soderholm concerning specific acts of cruelty upon the part of the defendant towards the deceased. It was not error in the court to permit this; nor is there any merit in the two succeeding objection, wherein it is alleged that the court erred in permitting the witnesses, Minnie Noble and Mrs. Soderholm, to testify to conversations had with the witness, Annie Thiede, the proper foundation having been laid. These are matters resting largely in the sound discretion of the trial court. Careful examination of the record shows that there was no abuse of this discretion. It was a material question, whether the defendant abused his wife, and Annie Thiede having denied that her mother was in the attic of the brewery in the nighttime under circumstances indicating that she had fled from the wrath of the defendant, as testified to by Mrs. Soderholm and her daughter, and the witness having further stated that she never saw her father whip or strike her mother, Mrs. Soderholm was recalled and testified in substance that Annie Thiede told her that defendant took the deceased from the attic and whipped her. This was not incompetent or hearsay evidence, nor was it collateral or immaterial, as counsel insists. It was properly admitted by the court.

e. Defendant made contradictory statements relevant to the manner in which the deceased met her death; he also told Dr. Ferrebee that a man, to whom he had sold whiskey during the night of the homicide and while his wife was lying dead in the saloon, had killed her.

The evidence tended to prove that whoever killed the deceased must have been partially covered with blood. Dr. Ferrebee examined the man thus accused the morning following the homicide, and when on the witness stand as a witness for the prosecution, the Dr. was asked whether he 687 had found any blood stains upon this person; his answer was in the negative; and permitting the answering of this question is assigned as error. This evidence only became competent and material in view of defendant's statement; he was endeavoring to exculpate himself, and in doing so sought to direct attention to others. Testimony that would tend to contradict and impeach him, and at the same time explain away any circumstance tending to connect another with the killing, would be material. Certainly it would have been proper for the prosecution to have shown that this person accused by the defendant of having killed his wife was in a different part of the Territory at the time of the homicide. The fact that several hours elapsed before the witness made the examination goes only to the weight of the evidence and does not affect the question of its materiality.

f. Complaint is made because a note written by the witness last named while he was at the defendant's saloon, a short time after the homicide, was admitted in evidence. During the trial the defendant's conduct immediately after the homicide was inquired into. Witnesses for the prosecution were examined with a view to show that the defendant himself desired the presence of the sheriff. The note in question was written by Dr. Ferrebee, and read over to the defendant before it was transmitted. It contained a direction that the sheriff be sent for; this direction, the witness testified to, was inserted without defendant's request, but wh'n read to him no objection was offered. In the light of the testimony, and especially that which was elicited on cross-examination of the people's witnesses, this, while not very material, was not subject to the objections urged.

688 III.

Lillie Birch, witness for the prosecution, testified that on the Sunday evening preceding the homicide deceased came to her home weeping. On cross-examination she was asked if the following evening defendant and his wife had not appeared friendly towards each other. This was objected to as not proper cross-examination, and the objection sustained. Appellant insists this was error. This exception is absolutely without merit. Witness testified to but one occurrence. If she had given evidence concerning general treatment of deceased by her husband, another question would have been presented. The negative maltreatment was a part of the defense. The witness could have been called by defendant, but is clear the question was not proper on cross-examination. It is also urged that error was committed in sustaining objections to the questions asked Mrs. and Mr. Soderholm, witnesses fo' the people. The questions asked of Mr. Soderholm, it is apparent, were not propounded for the purpose of testing his credibility, but to condemn him before the jury by inuendo. The first question assumes that a man, bearing the same surname, had a fight with his wife, and the second assumes that some person had trouble with his wife in Burgertown, growing out of his having some woman in his room. These questions were not cross-examination; had no relation whatever to anything concerning which witness had testified in his direct examination, and they assume facts in regard to which there was not even a suggestion of proof. The questions asked Mrs. Soderholm were clearly incompetent. Counsel asked her if her husband was not in the habit of whipping her, and whether or not she had not had trouble with him "in regard to a woman being in the house."

689 There is nothing in these questions that would tend in any manner to impeach the witness or test her credibility. The court asked defendant's counsel whether these questions were put in good faith. The reply was that he was relying upon information received from defendant and others. Upon cross-examination a witness may be asked any question which tends to test his accuracy or credibility, or to impair his credit by compromising his character; but the extent to which examinations shall be allowed is in the discretion of the court, and that discretion should be exercised in view of the circumstances attending the trial and the good or bad faith manifested by the parties. (1 Thompson on Trials, secs. 458, 461, and 464; People vs. Larsen, 37 Pac. Rep., 358.)

We can not say this discretionary power was abused by the court in passing upon the questions above referred to.

IV.

Defendant contends that the court erred in overruling his objection to going to trial on the 10th of October, 1894, for the reason that the evidence taken at the preliminary hearing had not been transcribed, certified, and filed with the clerk of the district court, as provided by law. Section 4833 of the Compiled Laws of Utah, 1888, provides in substance that in cases of homicide the testimony of each witness must be reduced to writing, or the magistrate before whom the hearing is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand,

and for that purpose may appoint a reporter. The transcript of the reporter, when written out in longhand writing and certified as being the correct statement of the testimony and proceedings in the case shall be prima facie a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, if the defendant be held to answer the charge, transcribe in longhand
690 writing his said shorthand notes, and certify and file the same with the clerk of the district court embracing the county in which defendant was examined, and shall in all cases file his original notes with said clerk. The reporter's fees shall be paid out of the treasury of the county.

When the case was called for trial the defendant's counsel "objected to going to trial" because the notes of the stenographer, taken at the preliminary examination of the defendant, had not been transcribed, certified, and filed with the clerk within ten days or at all. The record shows that the stenographer who had reported the hearing had declined to transcribe his notes because in similar cases both the county and Territory had refused to pay him, and upon suit against the former it had been held that the county was not liable. It appears also that the attorney for the people had requested a transcript, but the reporter had peremptorily declined to furnish it, and had come into open court and given his reasons for so doing. The defendant did not claim that he was prejudiced in not having a transcript of the reporter's notes, nor did he ask for a continuance in order to secure a transcript of them; and the record shows that he never made any request either to the reporter or to the court to be furnished with a copy of the testimony taken by the reporter. The record seems to indicate that defendant's position was that he could not be put on trial at all, because the time had expired within which under the statute the reporter was to file a certified transcription of his notes with the clerk. It is now contended by the appellant that he was tried without "due process of law." We think defendant's position unsound; he was deprived of no right. The preliminary hearing is not connected with the trial; it is unknown to the Constitution; it is no part of the grand jury system, and has no relation to the indictment. No matter what irregulari-
691 ties may have existed at the examination, even if defendant was there denied an impartial hearing, it would in no manner affect this case, or determine the trial upon indictment. Under our practice an examination prior to indictment is not indispensable. Indeed, many cases are taken directly before the grand jury. If appellant's position is correct the trial of a person charged with homicide, where an examination has been held before a magistrate, depends upon the reporter; if his notes are lost, stolen, or destroyed, or if through sickness or for any other reason he is unable to transcribe and certify to them, within ten days after the hearing, the defendant can not be legally tried, as it would not be with "due process of law." It was not the intention of the legislature to postpone the trial of a person charged with homicide until he knew the testimony against him; if so the grand jury would have been required to divulge the evidence before them, or that body would have been forbidden to examine any case until a preliminary hearing had taken place and the evidence there produced furnished the accused. It is not necessary to decide whether the statute is directory merely or mandatory. If defend-

ant had asked for a continuance in order to procure a copy of the testimony or made any showing that he was being deprived of any right or advantage or would in any manner be prejudiced in proceeding to trial, perhaps a different question might be presented than that here raised by the defendant.

V.

Appellant assigns as error the overruling of his challenges for cause directed against the jurors Harris, Faver, Burton, and Smith. The juror Harris, being examined on his voir dire, stated in substance that he had read an account of the homicide at the time it occurred in one
692 newspaper, but had never heard or read anything concerning the case since; he had forgot'en what was written and the manner in which the deceased had come to her death; he had never talked with any person concerning the case, nor did he form or express an opinion; he had, however, heard persons, whose names he had forgotten, express an opinion as to the guilt or innocence of the defendant; he had an impression as to defendant's guilt or innocence from the account read. It was, however, only a newspaper impression, although it would take evidence to remove it. The juror stated, however, that he could try the case fairly and impartially and give the defendant the presumption of innocence. The juror Burton had read in one newspaper only a partial account of the homicide and knew nothing except what he had read in the incomplete statement; he had no opinion concerning the guilt or innocence of the defendant, "just an opinion as to the occurrence." In answer to the court Mr. Burton stated that he could entirely disregard what he had read and any impression or opinion that he had formed from it, and try the defendant on the evidence produced. C. S. Faver, upon his examination, stated that he had read newspaper accounts of the homicide and that he had a strong impression arising therefrom as to the guilt or innocence of the defendant, and the fact that the homicide had been committed, but that his mind was entirely free from such an opinion or conclusion; "that he could accord to the defendant the full presumption of innocence in entering upon the trial; he had, however, an impression which would take some evidence to remove, but would enter the jury box (he hoped) unbiased. The statute of the Territory allows challenges to jurors for implied and actual bias. The provisions relating to this subject are found in Vol. II, Compiled Laws of Utah, 1888, page 703–4, and are as follows:
693 Section 241. "A particular cause of challenge is: (1) For such bias as when the existence of the facts is ascertained in the judgment of law, disqualifies the juror, and which is known in this act as implied bias. (2) For the existence of a state of mind on the part of the juror which leads to a just inference in reference to the case that he will not act with entire impartiality, which is known in law as actual bias."

For implied bias there are eight grounds of challenge. The only one necessary to be referred to in this case is that which provides for challenging the juror when he has formed and expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged. Section 244 provides: "That in a challenge for implied bias, one or more of the causes stated in section 242 must be alleged. In a challenge for

actual bias, the cause stated in the second subdivision of section 241 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statement in public journals, or common notoriety: Provided, it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter."

The challenges interposed by defendant were too general and did not raise any question for review by this court. Defendant's mode of challenge was, "Defendant challenges for cause." This is insufficient. (People vs. Hopt, 4 Utah, 249.) If the jurors were challenged for implied bias, the grounds upon which the challenge is placed must be stated. (Hopt vs. Utah, 120 U. S. 143; People vs. Hopt, 4 Utah, 250; People vs. Cotta, 49 Cal., 166.)

694 If the challenge is for actual bias, the cause stated in the statute must be alleged. (Hopt vs. Utah, and People vs. Hopt, supra). Moreover, defendant peremptorily challenged the jurors Harris and Burton, and under all authorities, if there had been error in overruling his challenges for cause, he could not now complain. But waiving the question as to the form of challenges and the last point suggested, and considering the matter upon its merits, we are of the opinion that the court properly overruled defendant's challenges. It is clear the jurors were not disqualified for implied bias, as they had neither formed or expressed an unqualified opinion or belief as to the guilt or innocence of the defendant, so that if they were disqualified it was because of actual bias. Counsel insists that these jurors were not impartial and therefore incompetent, and that the sixth amendment to the Federal Constitution which provides for "a speedy and public trial before an impartial jury" was violated. If the jurors were incompetent it was because of having read in "public journals" an account of the homicide; they had not gone to the extent of "forming and expressing an opinion upon the cause."

Illinois has a statute substantially the same as section 244, supra. It was contended in the case of Spies vs. People, 122 Ill., 261, that it was unconstitutional, as being in contravention of a provision of the State constitution providing for a speedy and impartial trial in criminal cases. The defendants claimed that a Federal question was involved, and carried the case to the Supreme Court of the United States. Speaking of the constitutionality of the act that court says: "Without pursuing this subject further, it is sufficient to say that we entirely agree with the supreme court of Illinois in its opinion in this case, that the statute on its face as construed by the trial court is not repugnant to paragraph nine of article two of

695 the constitution of that State, which guarantees to the accused party in every criminal prosecution a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed. As this is substantially the provision of the Constitution of the United States upon which the petitioners now rely, it follows that even if their position as to the operation and effect of that Constitution is correct, the statute is not open to the objection which is made against it." (Spies vs. Illinois, 123 U. S., 170.)

This section of our statute (244) has been passed upon by the Supreme Court of the United States in the case of Hopt vs. Utah, 120 U. S., 430. One of the jurors in that case was challenged for actual and implied bias; he testified on his voir dire that he had heard of the case through the newspapers, and read what was represented to be the evidence, and also had talked about it, so that he had formed a *qualified* opinion, but that he "could sit upon the jury and determine the case without reference to anything that he heard." The trial court held that he was competent. The court say: "By the express terms of the statute (section 244) he could not be disqualified as a juror for a an opinion formed or expressed upon statements in public journals, if it appear to the court, upon a declaration under oath or otherwise, that he could or would, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him. We think that the evidence, or what purports to be the evidence, printed in a newspaper, is a statement in a 'public journal' within the meaning of the statute, and that the judgment of the court, upon the competency of a juror in such cases is conclusive." (Reynolds vs. United States, 98 U. S., 145; People vs. Hopt, 4 Utah, 250; Spies vs. Illinois, 123
696 U. S., 31; People vs. McGonegal, 32 N. E. Rep., 616; People vs. Wah Lee Mon, 13 N. Y. S., 767.) But conceding that the jurors mentioned possessed actual bias, there is no question presented for review in this court. An issue of fact was raised, and the action of the trial court, no exception having been taken to any ruling admitting or rejecting evidence upon the voir dire examination, is final and conclusive. (II Compiled Laws of Utah, 1888, section 309; People vs. Hopt, 4 Utah, 250; People vs. Cotta, 49 Cal., 8; People vs. Ah Sing, 70 Cal., 8; People vs. McGonegal, supra; Spies vs. Illinois, 123 U. S.; United States vs. Pike, 49 N. H., 599.)

The cases upon which counsel relies are not opposed to the views herein expressed. They present different questions, and most of them are decided upon statutes different from ours. Perhaps a few years ago, before newspapers were so numerous, impressions and opinions founded upon reports contained in public journals would in some jurisdictions be deemed sufficient to disqualify a person for jury service.

VI.

It is further insisted that the court erred in overruling defendant's challenge of Juror Smith. Counsel's challenge was for "bias and prejudice." Were it not for the importance of the case, we would not notice a challenge based upon a ground so general, and wholly unknown to the statute. Moreover, after this challenge was overruled, the juror was peremptorily challenged by the defendant. During the examination of this juror he was asked by defendant's counsel whether, if it would appear that defendant was engaged in the saloon business, at the time and prior to the homicide, it would have a tendency to prejudice or bias his mind against him, and the reply was that he did not have "that respect for or regard for that class of men that I would have for men of other occupations generally as men of a class." He further stated that if the defendant went on the stand as a witness, the fact might have some weight in
697 his mind as to his credibility as a witness; that he knew nothing of the case or about the defendant, and had no bias or prejudice

against him, and no opinion of his guilt or innocence, and would not allow the fact that he thought less of a saloon keeper than men of other occupations generally to influence him in any way in passing upon his innocence or guilt, and that he could pass upon that the same as he would upon any other person. Under the statute there can be no question about the competency of the juror. It is not required that jurors close their eyes to just observations and experiences in life. It is their exclusive province to weigh the evidence and determine the credibility of the witnesses, and they can not be required in advance, as a prerequisite to competency, that they will give the same credit to one witness that they will give to another, or to one class of witnesses that they would to other classes.

It has been intimated by the supreme court of Indiana that in the trial of a cause involving the business of the defendant, who was a saloon keeper, that a juror who stated that he was prejudiced against saloon keepers, and would not believe defendant as he would persons of other occupations, was not qualified; but the court limits the rule to cases concerning the occupation or business against which the juror is prejudiced. (State vs. Dolan, 23 N. E. Rep., 761.) But in the case at bar defendant's business was not upon trial and was not involved in the case.

One of the jurors in the case of Spies vs. People, supra, in his voir dire answered that he had a decided prejudice against communists and socialists; defendants were not only communists and socialists, but anarchists. It was held that the court rightly overruled defendant's challenge to the competency of the juror, and that its finding was conclusive. (See
698 Spies vs. Illinois, 123 U. S., supra; De Puy vs. Quinn, 16 N. Y. S., 710; Fortune vs. Tramer, 19 N. Y. S., 598; People vs. Carpenter, 102 N. Y., 238; Com. vs. Poisson, 32 N. E. Rep., 906; Stoots vs. State, 9 N. E. Rep., 380.)

VII.

Appellant assigns as error the action of the court in permitting witnesses to testify whose names were not endorsed upon the indictment, and were not given in the list furnished by the district attorney prior to the commencement of the trial. On the day the case was set for trial, defendant's counsel, in open court, requested "as a favor and not as a matter of right," that the people's attorney furnish him the names of all the witnesses to be called during the trial before its commencement. The district attorney replied that he had no acquaintance with the case, but as soon as he was advised that other witnesses than those whose names were endorsed upon the indictment would be called he would inform defendant's counsel. So far as the record speaks upon this matter, this promise was fulfilled. Witness McQueen's name appears upon the indictment; and no objection whatever was made by defendant to the calling as witnesses of Carl Soderholm, Eva Berg, and Lillie Birch. The witness Striker was called on the 15th of October; defendant was notified on the 11th preceding that the prosecution would call him as a witness, which was eight days before the defense rested. We are not directed to any statute requiring that defendant shall be furnished with the names of the witnesses called by the prosecution;

and there is no authority, so far as we are advised, for holding that no person can be called as a witness for the people unless his name is endorsed upon the indictment. Section 4925, page 686, vol. 2 of the Compiled Laws of Utah, requires the names of the witnesses examined before the grand jury to be endorsed upon the indictment before it is presented
699 in court. If this is not done the defendant may take advantage of it before entering his plea by submitting a motion to set aside the indictment. The failure to endorse the names of the witnesses examined by the grand jury upon the indictment is waived by the defendant by pleading to the indictment. People vs. Symonds, 22 Cal., 349; People vs. Lopez, 26 Cal., 113; People vs. Jocelyn, 29 Cal., 562.

No objection was made to these witnesses testifying for the reason that their testimony operated as a surprise to defendant. In fact, in most, if not all points upon which they testified, defendant introduced rebuttal testimony; and impeaching testimony was produced with a view to destroy the weight of the testimony given by two witnesses whose evidence seemed to be of great importance. There is nothing in the record to indicate that their testimony was unexpected by the defense; no application for postponement was made in order to meet their statements; and upon motion for new trial no showing was made by affidavit, or otherwise, that defendant was prejudiced by the failure to have their names endorsed upon the indictment, or that their evidence was false. But aside from all this, there is nothing in our statute requiring the submission of the names of the people's witnesses to the defendant, or permitting only those witnesses to testify for the people whose names appear upon the indictment.

VIII.

Appellant claims that the court erred in permitting Louis Gronosky, one of the jurors, to be sworn and act as interpreter during the trial for two of the witnesses.

After the trial had been in progress several days, the prosecution called Jacob Lauenberger to testify as a witness in the cause. The witness spoke a peculiar and unusual dialect of the German language, and it was difficult to procure a competent interpreter. One Fritz Lomax was, with the consent of the defendant, sworn as interpreter. After some little testimony had been given through the interpreter, defendant's coun-
700 sel stated that he was informed by the defendant and a member of the bar that the interpreter was not translating correctly the answers of the witness. The juror Gronosky spoke up and said that several statements were not rightly interpreted. Thereupon he was asked by the district attorney if he understood fully the witness, and the juror answered affirmatively, and stated that he was willing to act as interpreter. The district attorney then asked the defendant's counsel privately, so as not to be heard by the court or jury, if the defendant would consent to the juror's acting as interpreter for the witness, to which counsel replied, Make your statement openly to the court. The district attorney then stated that he had endeavored to find some person to interpret the witness, but had been unable to find one who could fully understand witness. Request was then made of the court that the juror might be permitted to act as interpreter. The defendant and his counsel in open court

consented that the juror Gronosky might act as interpreter for the witness; thereupon the court consented, and Mr. Gronosky was sworn to act as interpreter for the witness.

Later the wife of Jacob Lauenberger was called to testify by the prosecution, and defendant and his counsel again consented in open court that the juror should act as interpreter for her. Without leaving his place in the jury box, the juror acted as interpreter for these two witnesses. This was done with the consent of the defendant and his counsel, and no objection was made until after the case had closed and the jury retired. Then defendant's counsel stated that he desired "to enter an objection and exception to the action of the court in permitting the juror Gronosky to act and serve as interpreter."

701 Counsel now contends that he was deprived of a trial by a constitutional jury of twelve men; that Gronosky, while acting as interpreter, ceased to be a juror. It is also claimed that the consent given was of no avail, as it was concerning a matter so vital that defendant could not waive it.

Section 3879 of the Compiled Laws of Utah, 1888, provides that the judge or any juror may be called as a witness by either party, but when this is done it is in the discretion of the court to order a postponement of the trial and that it be taken before another judge or jury. While this section is found in the civil practice act, section 5386 provides that the rules determining the competency of witnesses in civil cases are applicable also to criminal actions and proceedings. And it appears to have been the rule at common law that a juror could be called as a witness. (Arch. Crim. Pr. & Pl., p. 150; Rex vs. Rosser, 70 Car. & P., 648; McKain vs. Love, 2 Hill L., 506; s. c. 27 Am. Dec., 401.) In Mr. Pomeroy's edition of Archb. Crim. Pr. & Pl. is found a marginal note on page 150 which reads: "A juror may give evidence of any fact material to be communicated in the cause of a trial in a criminal prosecution. The jury may use that general knowledge which any man may bring to be subject matter of the indictment without being sworn. But if any one of the jurors has a particular knowledge of the subject—as, for instance, as to the value of a watch in a case where it is essential to prove what it is worth—he ought to be sworn and examined as a witness." We think under the statute as well as authority a juror may be called as a witness in a criminal cause. The question then arises, Is an interpreter a witness? Upon this point there seems to be no controversy, the opinion being that he is. (54 Cal., 527; 1 Greenleaf on Ev., sec. 183; Scherer vs. Hasber, 36 Ind., 541.)

702 It is argued that the juror while acting as interpreter would be so engrossed that he could not fairly hear, weigh, and determine the evidence; that he might easily give evidence undue weight and credit by being the medium of transmission, and that he might (and did in the case at bar) hear incompetent testimony. These and other objections of a like character are urged. We think there is no merit in them. The defendant could not have been prejudiced by permitting the juror to be the channel conveying the words to the court and jury. If he were not acting as interpreter he could hear the words of the witness; if incompetent evidence was given he would hear it. Instead of his forgetting the evidence, there would be more likelihood of his remembering it, when he had restated it as interpreter. He did not loose his identity as a juror.

We can see no difference between this case and one where the juror might have read for the other jurors some writing offered in evidence. Suppose a paper had been received in evidence, and a witness on the stand asked to read it, and owing to some infirmity he was unable to do so, and a juror sitting near should volunteer or be asked to read it to the court and jury. He might give undue emphasis to some words; he might be so "engrossed" in reading as to "not remember" its contents. To hold that this would remove him from the position of juror, that it would leave a jury of but eleven, and would be grounds for a new trial, and especially when it was consented to, would be sacrificing common sense to sophistry and absurdity.

There is no pretense that the juror acted other than honestly and fairly. It is not even hinted that his interpretation was faulty or biased. With this record upon this question it would be a monstrous *preversion* of justice to hold that this action of the court was reversible error.

703 IX.

Appellant assigns as error certain portions of the charge of the court, and also the refusal of the court to give certain numbered instructions asked by the defendant. Defendant's counsel presented to the trial court nine pages of typewritten matter, paragraphed and numbered from one to twenty-two inclusive, upon which was endorsed the following: "Comes now the defendant and requests the court to instruct the jury as follows." Then followed the signature of counsel and the requests. When the judge had concluded his charge, defendant's counsel excepted to "the refusal of the court to give the instructions requested by defendant, being numbered 1, 2, etc.;" (then follows the numbers of all the paragraphs except three, the court having adopted them verbatim); also to the instruction of the court defining "malice," "deliberation," and "premeditation;" and also to the charge of the court in submitting the question of murder in the second degree to the jury as not being "justified by the evidence and tending to mislead and confuse the jury." Thirteen days later, and twelve days after the jury had returned a verdict and been discharged, without consent of the attorney for the people, or permission of court, appellant's counsel took several general exceptions to the charge. They were, however, so indefinite and so general that even if taken in time they would prove unavailing and would not be considered by an appellate court.

It is the duty of counsel to seasonably call the court's attention to proceedings in the trial thought to be error and prejudicial, so that the trial court can correct the error, if made; and a failure to do so is such a waiver that the party will not be heard to complain thereafter. (Lewis vs. United States, 146 U. S., 379; Alexander vs. United States, 138 U. S.,
704 355; Marks vs Tompkins, 7 Utah, 425; United States vs. Carey, 110 U. S., 52; Mobile & M. R. Co. vs. Jurey, 111 U. S., 596.)

The rule in relation to exceptions to instructions is that the matter excepted to shall be so brought to the attention of the court before the retirement of the jury as to enable the judge to correct the error, if there be any, in his instructions to them; and this is also requisite in order that the appellate tribunal may pass upon the precise question raised without

being compelled to search the record to ascertain it. (Hickory vs. United States, 151 U. S., 316; Jacobson v. State, 55 Alabama, 151; Thompson on Trials, sec. 2394.)

The exceptions to the court's definitions of the words "malice," "premeditation," and "deliberation" are also too general to raise any question for the consideration of the court. There was no attempt to indicate wherein there was error in the language of the charge. A bare statement that the court erred in defining "malice," without pointing out wherein the error lies, is too general. (People vs. Hart, 37 Pac. Rep., 331; Holder vs. United States, 150 U. S., 92; Mobile & M. R. Co. vs. Jurey, supra; Allis vs. United States, 15 Ct. Rep., 36.)

However, we have examined the portion of the charge defining these terms, and we find no error therein. This counsel practically concedes in his brief.

And we think there was no error in charging upon the question of murder in the second degree. It was the duty of the court to define murder and its degrees, but not to hold as a matter of law (in view of all the testimony) that the defendant was either guilty of murder in the first degree or innocent. It was the exclusive province of the jury to determine whether premeditation and deliberation existed. They might have believed beyond all reasonable doubt that the defendant committed
705 the homicide and think it was done with malice, yet not have been convinced beyond all reasonable doubt that the defendant acted with premeditation and deliberation.

The case of The People vs. Hopt, supra, presented such facts as to irresistably lead one to the conclusion that if the defendant committed the crime he was guilty of murder in the first degree; yet the Supreme Court of the United States (110 U. S., 582), speaking of the case, say: "It was for the jury, having been informed as to what was murder * * * to say whether the facts made a case of murder in the first degree or murder in the second degree. It was competent for the judge to * * * inform the jury what the statutes defined as murder in the first degree and murder in the second degree."

Defendant complains because his requests were not all given. They were asked in the aggregate, and the rule is that when so asked, and there is anything exceptionable in either of them, the whole may be properly rejected by the court. (Indianapolis R. R. Co. vs. Horst, 93 U. S., 295; United States vs. Musser, 4 Utah, 166.)

A number of defendant's requests stated mere abstract principles of law, and had little, if any, application to the case, and two at least were not correct statements of the law. Most of them, however, were substantially given in the charge of the court. We think the entire case was covered in the court's charge, and that it was submitted properly to the jury. When this is done the court may refuse to instruct further, and it may "use its own language and present the case in its own way." (Indianapolis R. R. Co. vs. Horst, supra; United States vs. Musser, supra.)

Admitting that the general exceptions taken to the refusal of the court to give defendant's requests was good, we are of opinion that the case was fairly presented to the jury.

705½ We find no error in the record, and accordingly affirm the judgment of the lower court and remand the case, with directions to the lower court to fix the day for carrying its sentence into effect.

We concur:

MERRITT, *C. J.*
SMITH, *J.*

Marked: Opinion. Filed March 16, 1895. Joseph P. Bache, clerk.

706 UNITED STATES OF AMERICA, ss.

The President of the United States to the Honorable Supreme Court of the Territory of Utah, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before said court, between the people of the Territory of Utah, as respondent, and Charles Thiede, as appellant, a manifest error hath happened, to the great damage of the said Charles Thiede, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in that behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 60 days from the date hereof, in the said Supreme Court of the United States to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

[SEAL.] JOSEPH P. BACHE,
Clerk of the Supreme Court, Territory of Utah.

(Indorsed:) Supreme court of Utah. File No. 565. Charles Thiede, pltff. in error, vs. The People of Utah Territory, deft. in error. Writ of error. Original.

707 UNITED STATES OF AMERICA.

To the People of the Territory of Utah, and to Hon. John W. Judd, United States Attorney, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, in the District of Columbia, within 60 days from the date of this citation, pursuant to the writ of error filed in the clerk's office of the supreme court of the Territory of Utah, at Salt Lake City, Utah, wherein Charles Thiede is plaintiff in error and you are defendant in error, to show cause, if any there be, why a judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27th day of March, in the year of our Lord one thousand eight hundred and ninety-five.

[SEAL.] SAM'L A. MERRITT,
Chief Justice Supreme Court of Utah.

Attest:

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

Service of a copy of the above citation is hereby admitted this 28 day of March, A. D. 1895.

J. W. JUDD,
U. S. Attorney for Utah.

(Indorsed:) Supreme court of Utah. File No. 565. Charles Thiede, pltiff. in error, vs. The People of Utah Territory, deft. in error. Citation. Original. Filed in the supreme court, Mar. 28, 1895, at Salt Lake City, Utah. Joseph P. Bache, clerk.

708 In the supreme court of the Territory of Utah.

THE PEOPLE OF THE TERRITORY OF UTAH,
respondent,
v.
CHARLES THIEDE, APPELLANT.

Assignment of errors.

And now comes into court here the said Charles Thiede, by his attorney, Arthur Brown, and says that in the record and proceedings filed herein, and also in the rendering of judgment therein, there is manifest error in this, viz:

That the supreme court of said Territory of Utah erred in affirming the proceedings and judgment of the third district court wherein said cause was originally heard, to wit:

I.

The court erred in overruling the defendant's objection to going to trial on the 10th day of October, 1894, for the reason that the evidence taken at the preliminary hearing of this cause was not transcribed, certified, and filed with the clerk of the district court, as provided by law, (page 2).

II.

The court erred in permitting the witnesses George Wright, Christian Stryker, Eva Berg, Lillie Burch, Carl Soderholm, W. F. Hills, and William McQueen to testify in said cause, over the objection of the defendant, for the reason that neither of their names were indorsed on the indictment or given in the list furnished defendant by the prosecuting attorney, and defendant had no knowledge that they would be called to testify until the trial had begun.

709 III.

That the court erred in overruling the defendant's challenges for cause directed against the jurors Thomas E. Harris (pages 4–11), C. S. Favour (pages 18–24), R. T. Burton, jr. (pages 12–17), and Joseph Smith (pages 25–30), all of the jurors on their voir dire showing themselves to be incompetent to serve.

IV.

That the court erred in admitting incompetent, irrelevant, immaterial, and hearsay evidence over the objections and exceptions of the defendant, viz:

In permitting the witnesses Carl Victor Soderholm, Josephine Soderholm, Mary Lauenberger, Mary Anderson, Lillie Burch, Eva Berg, James Gilbert, and Jacob Lauenberger to testify to hearing deceased scream numerous times (pages 35–58–182); to seeing her on the road one night (pages 36–7); to seeing her with black eyes and a bruised face (pages 36–107–108–182); to her appearing alarmed and scared (page 56); to seeing deceased crying on several occasions (pages 57–387); to her eyes looking red (page 387); that deceased's body was bruised and discolored (page 107–8), without connecting the defendant with any of the facts testified to.

In permitting Dr. Benedict to testify that defendant was a strong, powerful man (page 132).

In permitting the witness John Montgomery to give his opinion as to how certain blood-stains were made (page 283).

In permitting the witness Annie Thiede to be recalled in rebuttal to lay the foundation for her impeachment (page 641).

In permitting the witness Minnie Noble to testify to a conversation had with Annie Thiede (page 638).

710 In permitting the witness Josephine Soderholm in rebuttal to give incompetent, irrelevant, and immaterial and hearsay evidence as to what Annie Thiede told witness (page 644).

In permitting the witness W. E. Ferrebee to testify that some unknown man had no blood stains on his clothing (page 342), and in permitting the same witness to read a note to the jury which he had written to the witness Henry Weiler (page 365).

V.

That the court erred in excluding competent and legal evidence offered by defendant during the trial of said cause, to which ruling defendant duly excepted, viz:

In excluding the questions on cross-examination of the witnesses Josephine Soderholm and Carl Victor Soderholm tending to show bias, prejudice, and general bad character of witnesses (pages 50–61–62).

In refusing to allow the witness Lillie Burch on cross-examination to answer questions relative to the relations of deceased and defendant, as to being friendly on the day before the homicide (pages 203–204).

VI.

That the court erred in refusing to give instructions numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, and 21, asked for by defendant.

VII.

That the court erred in charging the jury as follows, viz:

In defining malice, premeditation, and deliberation.

In charging on the crime of murder in the second degree.

In charging on the crime of manslaughter.

In charging the jury as to what weight should be given to circumstantial evidence.

In defining and charging on the question of reasonable doubt.

711 In charging the jury, "If there is any fact or element necessary to constitute the crime charged against the defendant, proved to the satisfaction of the jury by a preponderance of the evidence, which is inconsistent with the defendant's guilt, then you cannot convict him."

In charging that "You cannot consider the statements of counsel as to what the evidence is unless they state it correctly."

In charging on the question of confession made out of court.

In charging on the question of "Each link in the chain of circumstances, etc."

VIII.

That the court erred in permitting Louis Gronosky, one of the jurors, to be sworn and act as interpreter during the trial of said cause for the witnesses Jacob Lauenberger and Mary Lauenberger (pages 81–82–105–205–371.)

IX.

That the court erred in overruling defendant's motion for a new trial.

X.

That the court erred in overruling defendant's motion in arrest of judgment.

XI.

That the court erred in refusing to set aside the verdict of the jury, because the evidence is not sufficient to warrant or justify the verdict, and because the evidence is contrary to the verdict.

And the said Charles Thiede prays that the judgment aforesaid for the errors assigned may be reversed and annulled and absolutely held for nothing, and that he may be restored to all things which he has lost by reason of the premises aforesaid.

ARTHUR BROWN,
Atty. for Pl'ff in Error.
CHERRY & CHERRY,
Of Counsel.

712 UNITED STATES OF AMERICA,
Territory of Utah, ss:

In obedience to the command of the within writ, I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled cause, together with all things concerning the same.

Witness my hand and seal of said supreme court at Salt Lake City, in said Territory, this 28th day of March, 1895.

[SEAL.] JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

(Indorsed:) No. 565. In Court. Charles Thiede, plaintiff in error, vs. The People of the Territory of Utah, defendant in error. Assignment of errors. Filed March 27th, 1895. Joseph P. Bache, clerk supreme court of Utah Territory. Cherry & Cherry, attorneys for .

(Indorsement on cover:) Supreme Court U. S. Received May 25, 1895. Clerk's office. Case No. 15922. Term No. 633. Charles Thiede, plaintiff in error, vs. The People of the Territory of Utah. Utah Territory supreme court. Filed May 27th, 1895.

Office Supreme Court U. S.
FILED.
JUN 3 1895
JAMES H. McKENNEY,
CLERK.

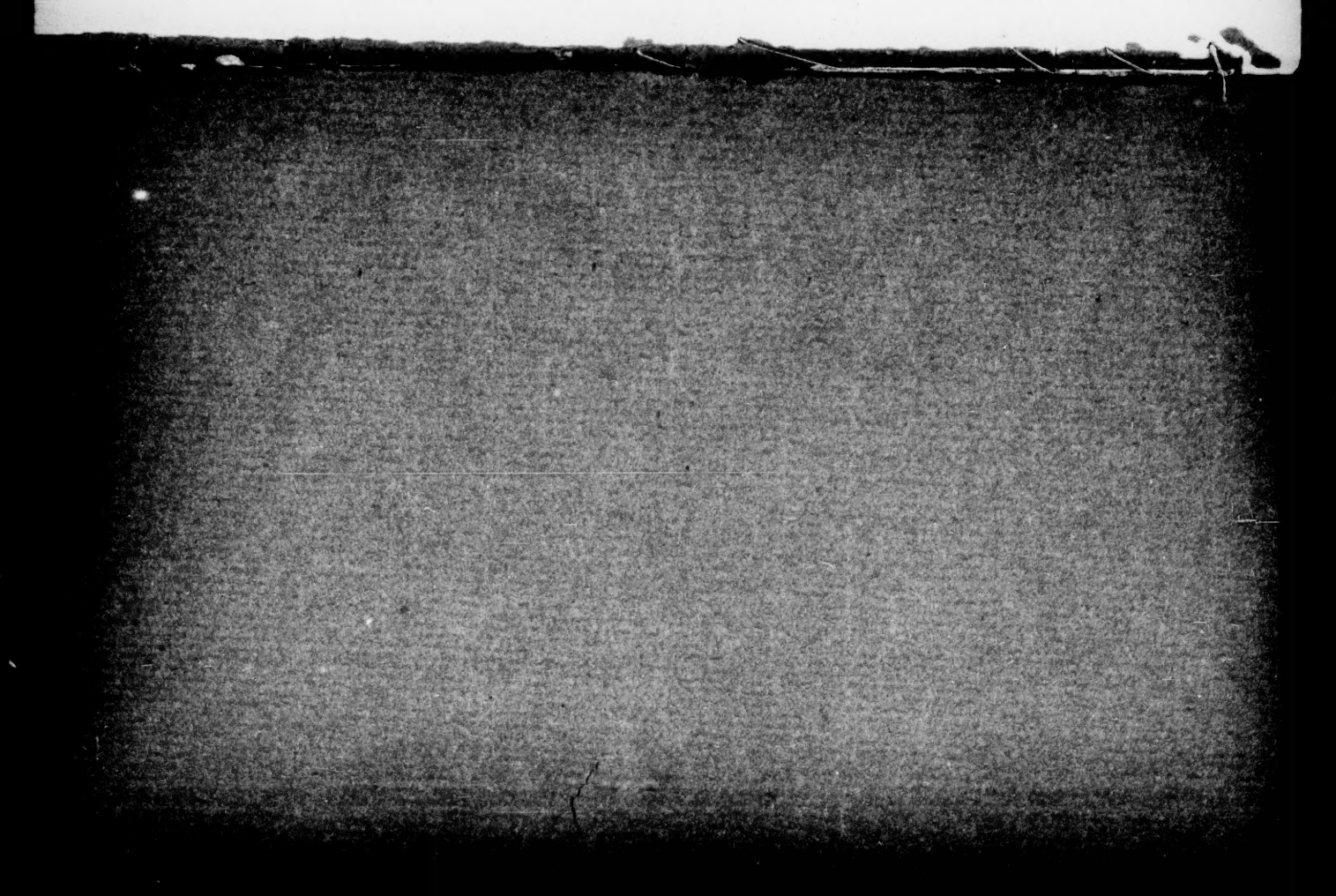
In the Supreme Court of the United States.

OCTOBER TERM, 1894.

CHARLES THIEDE, PLAINTIFF IN ERROR,
v.
THE PEOPLE OF THE TERRITORY OF Utah.
} No. 1038.

633

MOTION TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1894.

CHARLES THIEDE, PLAINTIFF IN ERROR,
v.
THE PEOPLE OF THE TERRITORY OF Utah. } No. 1038.

MOTION TO ADVANCE.

The plaintiff in error was indicted in the third judicial district court of the Territory of Utah for having murdered Mary Thiede, his wife, on April 30, 1894. He was convicted on November 5 last, and sentenced to be hanged.

The Solicitor-General respectfully moves the court to advance the case on the docket and set it down for hearing on such day during the next term as may be convenient to the court.

Notice of this motion has been served on the counsel for the plaintiff in error, and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

17990

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CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

CHARLES THIEDE, PLAINTIFF IN ERROR,
v.
THE PEOPLE OF THE TERRITORY OF UTAH. } No. 633.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

CHARLES THIEDE, PLAINTIFF IN ERROR,
v.
THE PEOPLE OF THE TERRITORY OF UTAH. } No. 633.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Plaintiff in error was indicted in the Territory of Utah in September, 1894, for the murder of his wife. He was found guilty of murder in the first degree on October 21, 1894. (Rec., p. 418.)

He appealed to the supreme court of Utah Territory, and the judgment was affirmed. (Rec., pp. 420, 438.)

The following correct summary of facts is taken from the opinion of the supreme court of the Territory.

> The undisputed testimony shows the following facts: The wife of the defendant was killed during

the night of Monday, the 30th day of April, 1894. The defendant, about half past one or two o'clock in the morning, awakened Jacob Lauenberger and informed him that he had found his wife, with her throat cut, lying near the defendant's saloon. Upon examination by physicians of the wound upon the person of the deceased, it was found that the head had been almost severed from the body by a wound in the throat made by some sharp instrument; the wound extended inward to the vertebræ, which obstructed the further passage of the weapon; that from the character of the wound death was inevitable and immediate. It was highly improbable, if not impossible, according to the testimony of the physicians, that the wound could have been made with a pocketknife, and highly improbable that it was made with a razor, but was of such a nature as would be made with a large knife or similar instrument. The body of the deceased was found lying within three to five feet of the southeast corner of the defendant's saloon, and about thirty feet further east was a pool of blood, with evidence of a struggle, indicating that the deceased and her assailant had engaged in a struggle there, and that the deceased had received a serious, if not fatal, wound at that place; and from that point to where the body lay there were blood marks and another pool of blood where the body lay. The defendant was in or near the saloon during the night until he went with the witness Lauenberger to Murray for a physician, and the saloon was lighted during the whole of the night. The defendant had blood upon his hands, and there was blood upon his clothing. The defendant, when he awakened Lauenberger and thereafter when going for a physician and after his return, made manifestations of grief at the loss of his wife.

The defendant and his wife were about thirty-three years of age, and for several years prior to her death the husband had slept at his saloon and his wife and her child, about ten years of age, at the dwelling house, a short distance from the saloon.

A number of witnesses testified that the defendant illtreated his wife, and the course of treatment had continued for a number of years; and one witness testified that the defendant, about four months prior to the death of his wife, had expressed a desire to get rid of *his wife*, saying that she was too good for his business. The defendant was a witness in his own behalf, and denied the illtreatment, and denied that he had expressed a desire to get rid of his wife; and there were other witnesses introduced by the defendant whose testimony tended to corroborate the defendant and contradict the testimony of some of the witnesses for the prosecution. We do not deem it necessary to review all the evidence on this point, but there certainly was sufficient evidence to warrant the jury in coming to the conclusion that the defendant and his wife had lived unhappily for years, and that the defendant had frequently abused and illtreated his wife, and that without any excuse so far as the evidence discloses.

The testimony on behalf of the prosecution shows that on Sunday evening preceding the murder the defendant and his wife had quarreled in the garden after dark; that they were called into the house of the witness Lauenberger; that when there the defendant slapped his wife in the face and ordered her to go home, and that she refused to go, giving as a reason that if she went home the defendant would murder her that night; that soon thereafter she left Lauenberger's house, and the defendant and his child and the witness Lauenberger went to defendant's saloon;

that while there the defendant's wife sought admittance to the saloon, which was denied by the defendant; that the defendant and his child slept in the saloon that night; that about this time the defendant's wife went to the house of a neighbor, crying and apparently afraid; that about ten o'clock that night she was seen on the public highway a short distance from the saloon, as if hiding and alarmed. On Monday morning the child went to school and was told to go home with the teacher, and she remained with her Monday night.

The last seen of the defendant's wife by any witness other than the defendant was about ten o'clock Monday evening, when she was seen sitting outside of the saloon of the defendant. During the night, about one o'clock, the defendant aroused the witness Lauenberger and informed him that his wife had been killed. The night was very dark. Dr. Ferrebee, the physician called, testified that he was close to the body before he could discern anything, and had to touch it before he knew it was a human body. The witness Lauenberger testified that before going for a doctor or alarming anyone else than himself and wife the defendant took a light and scanned the outside of the south door of the saloon and the side of the building adjacent thereto, as if looking for something upon the door and wall; that fresh spots of blood were found upon the outside of the door next day.

Witnesses testified that the defendant said, when he found his wife lying upon the ground, that she said, "Oh, Charley!" while the only medical witnesses in the case all agreed that it was impossible for the deceased to speak or articulate after the wound was inflicted. One or two witnesses testified that after their return to the saloon with the doctor,

and after the body of his wife had been carried into the saloon, the defendant was gone several times from the saloon before daylight, remaining at one time as long as twenty minutes. It was testified that a large knife used by the defendant in the saloon was missing and could not be found; and it was testified to by the sheriff and his deputy that on the morning after the murder, when they went there, the defendant stated to the sheriff that he had killed his wife during the night. The defendant testified that when he found his wife lying upon the ground he undertook to lift her up, and so got the blood upon his hands and clothing; that when he undertook to raise her a sound was made like "Oh, Charley!" and that that was what he said to the witnesses who testified that he said his wife said "Oh, Charley!" He denies that he made the statement to the sheriff that he killed his wife, and says that what he said was, "They killed my wife." (Rec., pp. 421–423.)

POINTS AND ARGUMENT.

I.

The first assignment is as follows:

> The court erred in overruling the defendant's objection to going to trial on the 10th day of October, 1894, for the reason that the evidence taken at the preliminary hearing of this cause was not transcribed, certified, and filed with the clerk of the district court, as provided by law. (Rec., p. 439.)

The exception appears upon page 16 of the record.

The case came on to be set for trial on the 2d day of October, 1894, and the 10th day of October, 1894, was fixed by the court for the trial. (Rec., p. 15.)

On the 10th day of October, when the case came on for trial, "the defendant objected to going to trial at said time, for the reason that the evidence taken before Grant H. Smith, justice of peace, at the preliminary examination of this cause, had not been transcribed, certified, and filed with the clerk of this court, as provided by law" (p. 15, 16).

By section 4883, Compiled Laws of Utah, 1888, in cases of homicide the testimony taken before the magistrate upon the preliminary examination, made for the purpose of determining whether or not there shall be a committal, is required to be transcribed into longhand by the reporter within ten days after the close of the examination, and by him certified and filed with the clerk of the district court.

It appeared in this case that the reporter had not transcribed the testimony and filed it with the clerk, and that he had refused to do the same until his fees were paid, it appearing that in another proceeding it had been held that he could not legally collect his fees from the county.

Therefore, at the time the cause came on for trial this statute had not been complied with and the ten days had elapsed, and it was impossible to comply with it.

The defendant *did not ask for a continuance, but objected to going to trial.* He did not show that he was in any way prejudiced, but his point, if well taken, simply meant that he never could be tried, because provisions of the law for transcribing, certifying, and filing testimony taken by the reporter had not been and could not then be complied with.

The section in question is in chapter 7, Compiled Laws of Utah, which deals exclusively with the preliminary examination of a case, and has nothing to do with the indictment by the grand jury or the trial in the criminal court. The filing of this testimony is not made a condition precedent to the right to proceed with a trial. Whether the statute be directory or mandatory upon the reporter is immaterial, as the requirement had nothing to do with the trial based upon the indictment.

The supreme court of Utah said:

> The preliminary hearing is not connected with the trial; it is unknown to the constitution; it is no part of the grand-jury system, and has no relation to the indictment. No matter what irregularities may have existed at the examination, even if defendant was there denied an impartial hearing, it would in no manner affect this case or determine the trial upon indictment. Under our practice an examination prior to indictment is not indispensable. Indeed, many cases are taken directly before the grand jury. If appellant's position is correct the trial of a person charged with homicide, where an examination has been held before a magistrate, depends upon the reporter; if his notes are lost, stolen, or destroyed, or if through sickness or for any other reason he is unable to transcribe and certify them within ten days after the hearing, the defendant can not be legally tried, as it would not be with "due process of law." (Rec., p. 429.)

II.

The second assignment is as follows:

> The court erred in permitting the witnesses George Wright, Christian Stryker, Eva Berg, Lillie

> Burch, Carl Soderholm, W. F. Hills, and William McQueen to testify in said cause over the objection of the defendant, for the reason that neither of their names were indorsed on the indictment or given in the list furnished defendant by the prosecuting attorney, and defendant had no knowledge that they would be called to testify until the trial had begun. (Rec., p. 439.)

There is no ground for the objection to William McQueen, for his name appears upon the indictment. (Rec., p. 1.)

The witness Eva Berg was introduced and was cross-examined by defendant, and no objection was made or exception taken to her being a witness. (Rec., pp. 244–246.)

The same is true as to Lillie Burch. (Rec., pp. 131, 132.)

The same is true as to Carl Soderholm. (Rec., pp. 32–44.)

On the 2d of October, when the order was made fixing the 10th as the day of trial, defendant's counsel requested that the counsel for the people furnish the defendant with the names of all the witnesses that the people would call upon the trial of said cause before the trial began, "the counsel for the defendant stating that he did not claim it as a matter of right, but as a matter of favor, and thought it was only fair to the defendant that he should be so advised; and thereupon Andrew Howat, assistant United States attorney, who had charge of said case on behalf of the people, stated that he was not aware of any witnesses that he would call on behalf of the people, except those

whose names were upon the back of the indictment—except Dr. Benedict, Dr. Worthington, Dr. Richards, and W. E. Ferrebee—that he had no acquaintance whatever with the case or what the several witnesses would testify to, and had no more information in regard to the matter than had the defendant's counsel, but stated that he would, as soon as he was informed of the name of any witness whom he desired to call in addition to those whose names were upon the back of the indictment, inform the defendant's counsel." (Rec., p. 16.)

When Wright, Stryker, and Hills were called, exception was taken to their testimony being admitted, on the ground that their names had not been furnished "until the trial commenced."

No affidavit is made showing any surprise or that any injury was done to the defendant by the introduction of these witnesses.

There is nothing in the record to show that the district attorney did not comply with his request to furnish the names of witnesses as soon as they came to his knowledge.

The witness Stryker was not called until October 15, and defendant had notice on the second day of the trial, viz, October 11, that he would be called. (Rec., p. 93.)

No statute is shown making it a duty to notify the defendant of the witnesses that would be called and creating that as a condition precedent to the right to go on with the trial.

The question of introducing witnesses, and whether or not the testimony operated as a surprise, or was in any way prejudicial to the rights of defendant, are all matters

within the discretion of the trial judge and to be passed upon by him at the time, or upon motion for a new trial, and are such matters of discretion as would not ordinarily be reviewed by this court, and certainly not in a case where there is no effort to show that the rights of the defendant were in any way prejudiced.

III.

The third assignment is as follows:

> That the court erred in overruling the defendant's challenges for cause directed against the jurors Thomas E. Harris (pp. 4–11), C. S. Favour (pp. 18–24), R. T. Burton, jr. (pp. 12–17), and Joseph Smith (pp. 25–30), all of the jurors on their voir dire showing themselves to be incompetent to serve. (Rec., p. 440.)

Harris testified that he had read an account in a paper, but had forgotten the details of it, and while he had an impression derived therefrom, he had no opinion; that he had not expressed an opinion; that he felt that he could, notwithstanding what he had read, or the impression that he had, lay it all aside and render a fair and impartial verdict, uninfluenced by bias or prejudice, or by anything that he had heard or read. (Rec., pp. 17–21.)

Burton had read a portion of an account in the Tribune, which did not purport to give the preliminary examination. He had heard nothing through any other medium; had not talked with anyone about the case. He said he thought he had formed an opinion from what he read, and that it would take some evidence to remove it. He said the opinion was strictly as to the occurrence, and not as to whether defendant was guilty of the crime or

not, and that he had acquired no bias or prejudice against the defendant from what he had read. He said he could entirely disregard what he had read and the impression received, and determine the question of guilt or innocence of the defendant upon the evidence that would be introduced, and upon that alone. (Rec., pp. 21, 25.)

Favour swore that he had read about the case in the newspapers and had a conversation with one person who had expressed an opinion, but who he thought knew nothing about the case. He said he had received an impression, and that it would require some evidence to change that impression. He said that his mind was so entirely free from such an opinion or conclusion that he could give the defendant the full presumption of innocence in entering upon the trial, and that the impression he had received from the papers would not affect his verdict. (Rec., pp. 25, 28.)

Smith said that he had heard of the case from a conversation in a general way, in which he did not discuss the circumstances, facts, or surroundings, and from which he formed no opinion, and that he had acquired no impression or opinion since his attendance on court.

He said that if it appeared in evidence that defendant was a saloon keeper it would not influence his mind as to his guilt or innocence, but would have weight as to the credibility of his testimony the same as the occupation of any other witness might. He said he had a prejudice against the business generally, but not against the individuals who carried it on, but that he would not allow it to influence him upon the question of innocence or guilt. (Rec., pp. 28, 31.)

All four of these parties were challenged peremptorily by defendant, with the exception of Favour, who acted as a juror. (Rec., p. 31.)

The provisions for challenging jurors in the Territory of Utah are contained in title 6, chapter 1, Compiled Laws of Utah, 1888. The causes are general and particular, those which are general not being applicable here.

A particular challenge may be based upon bias, implied or actual. Actual bias is that which arises under the existence of a state of mind on the part of a juror which leads to a just inference that he will not act with entire impartiality.

There are nine distinct grounds upon which a challenge for implied bias may be founded. Sec. 5022.

The only one which could have any bearing here is the eighth—"having formed or expressed an unqualified opinion or belief that the person is guilty or not guilty of the offense charged."

By section 5024, when a challenge for implied bias is made, one or more of the causes set out in section 5022 must be alleged.

There was no cause set forth in any of the challenges for implied bias. The only expression used was "challenged for cause," without stating any ground. This was insufficient. (*Hopt* v. *Utah*, 120 U. S., 436.)

By section 5024 of the compilation it is provided that in a challenge for actual bias the cause stated in the second subdivision of Sec. 241 (Sec. 5021 of Compilation) must be alleged. Nothing of this sort was done.

It is further provided by section 5024 that "no person shall be disqualified as a juror by reason of having

formed or expressed an opinion upon the matter or cause to be submitted to such juror, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the court upon his declaration under oath or otherwise that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him."

The judge passed upon the competency of the jurors before they were presented to the defendant for peremptory challenge, and his judgment was conclusive. (*Hopt* v. *Utah*, 120 U. S., 430, 435.)

Independently of the statute of Utah, none of the jurors would have been disqualified. Mr. Justice Marshall, in Burr's trial (1 Burr's Trial, 416), stated the rule to be that "light impressions, which may fairly be presumed to yield to the testimony that may be offered, which may leave the mind open to a fair consideration of the testimony, constitute no sufficient objection to a juror; but that those strong and deep impressions which close the mind against the testimony that may be offered in opposition to them, which will combat that testimony and resist its force, do constitute a sufficient objection to him."

In *Reynolds* v. *United States* (98 U. S., 156), this court, in passing upon the question of reviewing the action of a trial judge in determining the qualification of jurors, said:

> The finding of the trial court upon that issue ought not to be set aside by a reviewing court unless the error is manifest. * * * It must be made clearly to appear that upon the evidence the court

> ought to have found the juror had formed such an opinion that he could not in law be deemed impartial. The case must be one in which it is manifest the law left nothing to the "conscience or discretion" of the court.

See also *Spies* v. *Illinois* (123 U. S., 179).

All of the jurors were challenged except Favour, and, therefore, as to three of those objected to it can not be said that defendant was prejudiced, for they did not try him.

This court said in *Hayes* v. *Missouri* (120 U. S., 68, 71) that the right to challenge was the right to reject and not the right to select, and that if an impartial jury was obtained the constitutional rights of the accused were preserved.

It is true that in *Hopt* v. *Utah* (120 U. S. 436) the court spoke of the fact that the defendant had peremptory challenges which were unexhausted when the jury was completed. This, however, does not change the rule in respect of the rejected jurors, for in *Spies* v. *Illinois* (123 U. S., 168) the court said:

> We are therefore confined in this case to the rulings on the challenges to the jurors who actually sat at the trial.

It appeared in that case that one of those who sat on the trial was called and sworn after all the peremptory challenges of the defendants had been exhausted. This was the juror Sanford. He stated that he had a decided prejudice against socialists and communists. Upon the statement being made that no question of socialism or anarchism was to be determined, nor as to whether it was right or wrong, and that the only issue was whether

these men threw the bomb which killed Degan, he said that he could, notwithstanding what he had heard of conversations and seen in the newspapers, determine the case regardless of any impressions which he might have. The juror was held competent by the court. This court, applying the rule laid down in the Reynolds Case, held that it would not review the action of the trial judge.

A somewhat different objection is made to Smith, though the ground as stated is "bias and prejudice." It appeared during his examination that he said he was prejudiced against saloon keepers so far as it affected their credibility as witnesses, but that this would not affect his determination of the question of the guilt or innocence of defendant.

The criminal charge had no reference to the occupation of the defendant, and therefore the question of prejudice against the business cut no figure.

In the case of *Spies* v. *Illinois*, the juror Sanford, on his voir dire, said that he had a decided prejudice against communists and socialists—and the defendant belonged to those classes—and yet this prejudice was not held sufficient to reject the juror.

IV.

The fourth assignment is as follows:

> That the court erred in admitting incompetent, irrelevant, immaterial, and hearsay evidence over the objections and exceptions of the defendant, viz:
>
> In permitting the witnesses Carl Victor Soderholm, Josephine Soderholm, Mary Lauenberger, Mary Anderson, Lillie Burch, Eva Berg, James

Gilbert, and Jacob Lauenberger to testify to hearing deceased scream numerous times (pp. 35, 58, 182); to seeing her on the road one night (pp. 36, 37); to seeing her with black eyes and a bruised face (pp. 36, 107, 108, 182); to her appearing alarmed and scared (p. 56); to seeing deceased crying on several occasions (pp. 57, 387); to her eyes looking red (p. 387); that deceased's body was bruised and discolored (pp. 107, 108), without connecting the defendant with any of the facts testified to.

In permitting Dr. Benedict to testify that defendant was a strong, powerful man (p. 132).

In permitting the witness John Montgomery to give his opinion as to how certain blood stains were made (p. 283).

In permitting the witness Annie Thiede to be recalled in rebuttal to lay the foundation for her impeachment (p. 641).

In permitting the witness Minnie Noble to testify to a conversation had with Annie Thiede (p. 638).

In permitting the witness Josephine Soderholm in rebuttal to give incompetent, irrelevant, and immaterial and hearsay evidence as to what Annie Thiede told witness (p. 644).

In permitting the witness W. E. Ferrebee to testify that some unknown man had no blood stains on his clothing (p. 342), and in permitting the same witness to read a note to the jury which he had written to the witness Henry Weiler (p. 365). (Rec., p. 440.)

The testimony of the witnesses mentioned in the first paragraph was all relevant and competent as tending to show the relations that existed between the defendant and his wife, and as corroborative of the other testimony tending to show that he killed her.

Where, as in this case, the fact of killing depended upon proof by circumstantial evidence, the existence of cordial relations between them would have been admissible in his behalf to repel the idea of wife murder. So, on the other hand, the fact that she had been heard to scream frequently, been seen on the road at night, her eyes were frequently black, and her face bruised, and that she looked alarmed and scared, that she was repeatedly seen crying, and that her body was bruised and discolored were all such circumstances as should have been permitted to go to the jury upon the question of motive and in explanation of his conduct.

The testimony of Dr. Benedict that the defendant was a strong, powerful man was relevant. The objection appears on page 90 of the record. He had already sworn that from the appearance of the wound and the instrument with which it was inflicted it required a strong person to have done it. If defendant had been a weak man, and feeble and incapable of giving such a blow, such evidence certainly would have been competent in his behalf. It was relevant, on the other hand, to show that he was strong and might have inflicted the wound. It was a circumstance the value of which the jury were to pass upon.

In *Moore* v. *United States* (150 U. S., 60) Mr. Justice Brown, speaking for the court, said:

> Where the question relates to the tendency of certain testimony to throw light upon a particular fact, or to explain the conduct of a particular person, there is a certain discretion on the part of the trial judge which a court of error will not interfere with,

unless it manifestly appear that the testimony had no legitimate bearing upon the question at issue, and is calculated to prejudice the accused in the minds of the jurors. There are many circumstances connected with a trial the pertinency of which a judge who has listened to the testimony and observed the conduct of the parties and witnesses is better able to estimate the value of than an appellate court, which is confined in its examination to the very words of the witnesses, perhaps imperfectly taken down by the reporter.

In *Holmes* v. *Goldsmith* (147 U. S., 164) this court said:

> As has been frequently said, great latitude is allowed in the reception of circumstantial evidence, the aid of which is constantly required, and therefore, where direct evidence of the fact is wanting, the more the jury can see of the surrounding facts and circumstances the more correct their judgment is likely to be. "The competency of a collateral fact to be used as the basis of legitimate argument is not to be determined by the conclusiveness of the inferences it may afford in reference to the litigated fact. It is enough if these may tend, even in a slight degree, to elucidate the inquiry, or to assist, though remotely, to a determination probably founded in truth." (*Stevenson* v. *Stewart*, 11 Penn. St., 307.)
>
> The modern tendency, both of legislation and of the decision of courts, is to give as wide a scope as possible to the investigation of facts. Courts of error are specially unwilling to reverse cases, because unimportant and possibly irrelevant testimony may have crept in, unless there is reason to think that practical injustice has been thereby caused.

See also *Alexander* v. *United States* (138 U. S., 356).

The objection to the testimony of John Montgomery can not be insisted upon, for his testimony was admitted without exception by defendant. (Rec., p. 179 *et seq.*)

THE TESTIMONY OF ANNIE THIEDE.

The witness Steele was on the stand and the prosecuting attorney was questioning him in regard to a statement made by Annie Thiede, and defendant's counsel objected on the ground that it was hearsay and that no foundation had been laid for the question as an impeaching question. The prosecuting attorney said that if there was any dispute about that he would ask leave to recall Annie Thiede and lay the foundation. Objection was made that it was immaterial and irrelevant and a collateral question. The recollection of the court was that the questions were asked, but he said that if there were any doubt witness might be recalled. Defendant's counsel objected to that as error, but assigned no ground. The prosecuting counsel said that he would recall her for the purpose of impeachment, and that he had called her attention to it, but that the language he used might have been somewhat different from what the witness might state. This was a matter entirely within the discretion of the trial judge. The judge and the district attorney thought the foundation had been laid, but to avoid any question the witness was recalled and the question was propounded to her. (Rec., pp. 407–8.)

It is insisted that this was not erroneous and was within the discretion of the trial judge, and there is no evidence that defendant was in any way prejudiced by his action.

MINNIE NOBLE.

No reason is set forth to sustain this objection. The record shows, page 405, that Minnie Noble was recalled in rebuttal to contradict a statement that had been made upon the witness stand by Annie Thiede. The defendant's counsel stated that Annie Thiede did not deny what the witness stated. If that were true, then there was no harm in the testimony and no possible injury could result to him therefrom.

JOSEPHINE SODERHOLM.

The testimony of this witness appears on page 408. She was examined in rebuttal for the purpose of contradicting Annie Thiede. Annie Thiede had testified that she never saw her father strike or slap her mother. Rec., pp. 334, 337.) This witness proved that Annie Thiede said that her father was whipping her mother, or words to that effect.

W. E. FERREBEE.

The objection to this witness' testimony is found on page 217. Another man had been seen in the neighborhood. Defendant had made contradictory statements in reference to the manner in which the deceased met her death, and told the witness Ferrebee that a man to whom he had sold whisky during the night of the homicide had killed her.

The deceased had been killed by violence, and the evidence tended to show that the murderer must have gotten blood on his clothing.

The testimony of this witness was that the man seen had no stains of blood upon his clothing.

This ought to have gone to the jury as a circumstance in determining the guilty party. The existence or non-existence of blood upon the garments of a person near the scene of violence is a material fact to go to the jury, and its admission could not be error.

The further objection is made that this witness read a note to the jury which he had written to the witness Henry Weiler. (Rec., pp. 231, 232.)

The note was written under the following circumstances: The witness was at the house with Thiede when the killing was first made known and the note was written in Thiede's presence and shown to him before it was sent off. (Rec., pp. 226, 227.)

The note was as follows:

> DEAR HENRY: Mrs. Charles Thiede has been brutally murdered; her throat has been cut. I want you to send Frank to Sandy after Mr. C. E. Smith, druggist, and Martin Pearson. Telephone to the sheriff; send word to Albert Cahoon. I want you to come here; come, Henry, for I am alone. Say nothing to your wife, for she is sick. I am at Thiede's saloon; come promptly; send messenger. Dr. Ferrebee. (Rec., p. 232.)

There was nothing in this note that could have in any way affected the defendant. It was properly a part of the res gestæ, as it was sent by his son and written in his presence. At any rate, it was immaterial and innocuous. It stated no fact bearing on the killing, except that Mrs. Thiede had been murdered, and there was no controversy about this.

V.

The fifth assignment is as follows:

> That the court erred in excluding competent and legal evidence offered by defendant during the trial of said cause, to which ruling defendant duly excepted, viz:
>
> In excluding the questions on cross-examination of the witnesses Josephine Soderholm and Carl Victor Soderholm tending to show bias, prejudice, and general bad character of witnesses (pp. 50, 61–62).
>
> In refusing to allow the witness Lillie Burch on cross-examination to answer questions relative to the relations of deceased and defendant, as to being friendly on the day before the homicide (pp. 203, 204). (Rec., p. 440.)

JOSEPHINE SODERHOLM.

The assignment goes to the following:

> Q. Ask her if she is not mistaken about that occurrence, and if it wasn't her and her husband had a fight of that kind on the bridge.
>
> The COURT. That is not cross-examination. If the witness is to be impeached there is a proper way.
>
> (Exception.)
>
> Q. I will ask you if your husband is not in the habit of whipping you?
>
> The COURT. There is no necessity for asking those questions.
>
> Judge CHERRY. I have a right to ask them, and if she don't desire to answer them, or if counsel objects, that is their privilege.
>
> Judge HOWAT. Counsel has no right to ask questions that have been passed upon when there is simply an evident purpose to influence the jury.
>
> (Objection sustained. Exception.)

Q. I will ask you if you haven't had trouble with your husband in regard to a woman being found in your house when you returned home on a certain occasion?

The COURT. If counsel will make the statement he is in good faith the court will consider it.

Judge CHERRY. I will state my purpose and my good faith; it shows for itself. I propose to show that these parties are prejudiced against the defendant by reason of certain facts that came out of a little scandal transaction and difficulty between this witness and her husband arising——

The COURT. I ask if those questions are in good faith?

Judge CHERRY. I can only rely on information received from my client and others that I am asking for facts which I expect to prove, and I want to put these questions to this witness.

Judge HOWAT. I object as incompetent.

(Objection sustained. Exception.) (Rec., p. 49.)

The first question was not fair cross-examination, for by no possibility could witness have been mistaken as to whether the fight was between her and her husband or other persons, and therefore the questions did not tend to resolve any doubt or explain the testimony of the witness, but was pregnant with a suggestion that was intended to prejudice the jury against the witness.

The other questions related to matters between her and her husband that were entirely without the issues before the jury and were collateral matters. When the court put the counsel to the test of good faith in asking the questions, an evasive answer was given. He stated that he could only rely upon information received from his

client, and did not state what the information was, or that it was of a character to justify the questions and that the questions based upon it were asked in good faith.

CARL VICTOR SODERHOLM.

The questions asked and ruled out are as follows:

Q. Ask him if he is the same Mr. Soderholm that had a fight with his wife out on the bridge one Sunday morning.

The COURT. That is not cross-examination.

(Exception.)

Q. Ask him if he is the same individual who had trouble with his wife in Burgatown by reason of having a woman in his room, and when his wife came home he and his wife got into a fight out on the street, and he run and hid.

(Same objection and exception.)

Q. I want to know if this witness is not in the habit of whipping his wife?

(Objection as immaterial, incompetent, irrelevant, and not cross-examination.)

The COURT. That is not cross-examination. If you wish to impeach the witness there is a proper way to do it.

Judge CHERRY. I want to show the animus, bias, prejudice, and general character of this witness.

(Objection sustained. Exception.) (Rec., pp. 42, 43.)

These questions are so manifestly incompetent that the exception hardly merits comment. They relate to matters which had no bearing upon the issues and are entirely collateral.

The character of the witness was open to attack in any of the recognized methods, and it was not competent to show the relations between the witness and his wife.

The testimony sought to be elicited by this witness was doubtless competent, but the witness had been called in behalf of the people, and the information sought to be brought out in cross-examination had no reference to the direct testimony, and on this ground the court ruled it out. At the same time the court stated that the defendant could recall the witness and make the proof. No effort was made to recall the witness. If the testimony was valuable and was lost to the defendant, the action of the court did not deprive the defendant of it. It was simply a question of order in which the testimony should be produced that was ruled upon. (Rec., p. 132.)

The order of the proof is rather a matter in the discretion of the court than of strict right in the parties. *Wood* v. *United States* (16 P, 361).

VI.

The sixth assignment is as follows:

> That the court erred in refusing to give instructions numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, and 21, asked for by defendant. (Rec., p. 441.)

These requests are set out on pages 8 to 10 of the record. They are dated October 19, 1894, and are drawn up as an entirety. The indorsement shows that they were filed on October 19, 1894.

The charge was delivered on October 20, 1894. (Rec., p. 410.)

All of these requests were, therefore, made to the court before the charge was given. The judge indorsed upon them, "Refused as a whole, except as given. G. W. Bartch, judge." (Rec., p. 8.)

The defendant did not except to the refusal of the court to give any particular request, and there is nothing in the record to show that any particular request was renewed after the court charged the jury. The only exception is as follows:

> The defendant excepts to the refusal of the court to give the instructions requested by the defendant, being numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, and 21. (Rec., p. 416.)

If these requests had been made after the judge had charged the jury, and there is nothing to show that they were, nevertheless the exception is too general, and nothing was expressly called to the attention of the court, but the entire mass of the requests so numbered, as an entirety, was embraced in one exception.

The trial judge could not be put in error on such an exception.

In *Beaver* v. *Taylor* (93 U. S., 46, 54) plaintiff requested the court to charge instructions offered together, numbered 1 to 8, all of which the court declined, and the plaintiff excepted to the refusal of the court to charge the jury on the several points of law as by him requested. The court said:

> The entire series of propositions was presented as one request; and, if any one proposition was unsound, an exception to a refusal to charge the series can not be maintained.

In *Indianapolis, etc., R. R. Co.* v. *Horst* (93 U. S., 295) the defendant asked for 20 instructions, all of which the court refused, and the defendant excepted. The court said:

> When instructions are asked in the aggregate, as were those of the defendant, and there is anything exceptionable in either of them, the whole may be properly rejected by the court.

See also *Bogk* v. *Gassert* (149 U. S., 26); *Holder* v. *United States* (150 U. S., 92); *Hickory* v. *United States* (151 U. S., 316); *Allis* v. *United States* (155 U. S., 122).

In *Bogk* v. *Gassert* (149 U. S., 26) the error assigned was that the court did not give either of the instructions 2, 6, and 7 as requested by defendant. Defendant requested 12 instructions, all of which were given except 2, 6, and 7, to which action of the court the defendant then and there excepted for the reason that said instructions numbered 2, 6, and 7 correctly stated the law. The court said:

> This exception, as well as the one taken to the granting of plaintiff"s requests, is open to the objection so often made that a general exception taken to a refusal of a series of instructions taken together and constituting a single request is improper, and will not be considered if any one of the propositions be unsound.

The first request was substantially charged, and so was the second, third, eighth, fourteenth, and seventeenth. A number of the instructions had been incorporated in the charge as asked, such as the sixth, fifteenth, eighteenth, nineteenth, and twenty-second.

The twenty-first request was as follows:

> The jury are instructed that marital discord and quarrels are relevant to prove motive in cases of marital homicide, but as instances of such quarrels are very numerous, generally expending their force in words, such proof is entitled to little weight, unless connected in some way with the fatal wound. (Rec., p. 11.)

It asks the court to assume the fact that marital quarrels are very numerous, generally expending their force in words, and to charge upon this assumption that the evidence of such quarrels is entitled to little weight.

The fact set out was not in proof, and the court could not assert it to be true.

The weight of such evidence was a matter for the jury to pass upon, and the court rightfully refused to adopt this instruction.

Without any request except the original presentation of these instructions as an entirety, the exception so taken imposed the burden upon the court of going over the instructions and picking out what had not been given and what had already been covered by the general charge, which might be sound in law and applicable to the case. It is because the court did not do this that error is now assigned, and it is insisted that it is too general.

In *Beaver* v. *Taylor* (93 U. S., 55) the court said:

> It is not the duty of a judge ~~of that~~ of the circuit court or of an appellate court to analyze and compare the requests and the charge, to discover what are the portions thus excepted to. One object of an exception is to call the attention of the circuit judge to the precise point as to which it is supposed he has

erred, that he may then and there consider it, and give new and different instructions to the jury, if in his judgment it should be proper to do so.

It is the duty of counsel to except distinctly and severally. (*Newport News and Miss. Valley Co.* v. *Pace*, 158 U. S., 37.)

VII.

The seventh assignment is as follows:

That the court erred in charging the jury as follows, viz:

In defining malice, premeditation, and deliberation.

In charging on the crime of murder in the second degree.

In charging on the crime of manslaughter.

In charging the jury as to what weight should be given to circumstantial evidence.

In defining and charging on the question of reasonable doubt.

In charging the jury, "If there is any fact or element necessary to constitute the crime charged against the defendant, proved to the satisfaction of the jury by a preponderance of the evidence, which is inconsistent with the defendant's guilt, then you can not convict him."

In charging that "you can not consider the statements of counsel as to what the evidence is unless they state it correctly."

In charging on the question of confession made out of court.

In charging on the question of "each link in the chain of circumstances," etc. (Rec., p. 441.)

The objections that the court erred "in defining malice, premeditation, and deliberation;" "in charging the jury as to what weight should be given to circumstantial evidence;" "in defining and charging on the question of reasonable doubt;" "in charging on the question of each link in the chain of circumstances;" and "in charging on the question of confession made out of court," are all so vague and indefinite that the trial judge could not tell what particular portions of his charge were objected to. The said assignments are wholly insufficient under the fourth rule and under the authorities above set out under the sixth assignment.

The objection that "charging on the crime of murder in the second degree" was erroneous, is not sound, for in *Hopt* v. *Utah* (120 U. S., 430) this court held that it is competent for the judge to inform the jury what the statutes defined as murder in the first degree and murder in the second degree, and that it was for the jury to determine what degree of murder was made out under the facts of the case.

To the assignment relating to "the preponderance of evidence," "the statements of counsel," to "charging upon the crime of manslaughter," "in defining and charging upon the question of reasonable doubt" and "in charging upon the question of confession made out of court," no exception was taken during the trial. (Rec., 416, 417.)

The charge was given October 20, 1894. (Rec., p. 410.) The verdict of guilty was rendered October 21, 1894. (Rec., p. 418.)

On November 2, 1894, for the first time, exception was taken to the charge pertaining to the confession and reasonable doubt and circumstantial evidence, and the charge upon "each link in the chain of circumstances." (Rec., p. 417.)

VIII.

The eighth assignment is as follows:

> That the court erred in permitting Louis Gronosky, one of the jurors, to be sworn and act as interpreter during the trial of said cause for the witnesses Jacob Lauenberger and Mary Lauenberger (pp. 81, 82, 105, 205, 371). (Rec., p. 441.)

No objection was made to permitting Gronosky to act as interpreter. On the contrary, the defendant, by his counsel, in open court, consented to it as follows:

> CHERRY. Your honor, I am informed that the interpreter is not correctly translating the answers of the witness.
>
> HOWAT. Who told you so?
>
> CHERRY. A member of the bar and the defendant.
>
> Juror GRONOSKY. There were several statements here not rightly interpreted.
>
> Judge HOWAT. Do you understand him fully?
>
> A. Yes; I do. This gentleman, perhaps, misunderstood him, but the evidence was different entirely; in fact, I remarked that it was wrong.
>
> HOWAT. Will you act as interpreter?
>
> Juror GRONOSKY. Yes; I will.
>
> Judge HOWAT. I want the record to show that Louis Gronosky, one of the jurors, acts as interpreter for this witness. The defendant, and by his counsel in open court, consents to that.

Judge CHERRY. I have no objections. So far as I know Mr. Gronosky is well versed. If he is, that is all I ask.

Judge HOWAT. Do you consent he act as interpreter?

A. I have consented several times.

That it was here stated to the court by the prosecuting attorney that the witnesses, Jacob Lauenberger and his wife, Mary Lauenberger, spoke a peculiar dialect of the German language, and that it was very difficult to get anyone who could fully understand these witnesses; that he had been unable to find anyone who could fully understand the witnesses, and that he asked the court, under the circumstances, that the juror Louis Gronosky act as interpreter, and that the court said he might act as interpreter. (Rec., pp. 62, 63.)

MARY LAUENBERGER, a witness, sworn and examined for the prosecution, testified as follows:

By Judge HOWAT:

Judge HOWAT. I ask Mr. Cherry if he consents that Louis Gronosky act as interpreter for this witness?

Judge CHERRY. We have no objections.

Judge HOWAT. Do you consent? I ask you. I ask Judge Cherry whether he consents that this man shall act?

Judge CHERRY. We have no objections, and, of course, we consent.

Judge HOWAT. Do you consent? I ask you if you consent?

The COURT. If counsel consents the record may show the defendant and his counsel consent that Mr. Gronosky act as interpreter for this witness. Proceed now, gentlemen. (Rec., p. 75.)

JACOB LAUENBERGER, recalled.

By Judge HOWAT:

Judge HOWAT. I wish the record to show that the defendant consents that Mr. Gronosky act as interpreter.

Q. (By CHERRY.) Do you want that done every time?

A. Yes, sir.

Judge CHERRY. Let it show; very well. (Rec., p. 235.)

After the jury had been charged and retired, for the first time, an objection was taken to the action of the court permitting Gronosky to act as interpreter. (Rec., pp. 416, 417.)

It is submitted that advantage can not be taken in this way in a trial, and that justice can not be defeated by a party consenting to a juror acting as interpreter and then making such action, after he is convicted, a ground for reversal. Besides, it was not erroneous, for a juror is competent as a witness, and an interpreter is nothing but a witness to the other jurors as to what the witnesses upon the stand had stated.

Section 3879 of the Compiled Laws of Utah, 1888, provides that the judge or juror may be called as a witness by either party, and section 5386 provides that the rules determining the competency of witnesses in civil suits are applicable to criminal actions and proceedings, and the authorities are abundant to the effect that a juror may be a witness. (*People* v. *Symonds*, 22 Cal., 349; *People* v. *Lopez*, 26 Cal., 113; *People* v. *Jocelyn*, 29 Cal., 562.)

IX.

The ninth assignment is as follows:

> That the court erred in overruling defendant's motion for a new trial.

This is not assignable error in this court. *Railway Company* v. *Heck*, 102 U. S., 120; *Hanna* v. *Maas*, 122 U. S., 24, 26; *Holder* v. *United States*, 150 U. S., 91, 92; *Arkansas Valley Land and Cattle Co.* v. *Mann.*, 130 U. S., 69; *Bullitt County* v. *Washer*, 130 U. S., 142; *Missouri P. R. Co.* v. *Chicago and A. R. Co.*, 132 U. S., 191; *Fishburn* v. *Chicago, M. and St. P. R. Co.*, 137 U. S., 60; *Fitzgerald and M. Construction Co.* v. *Fitzgerald*, 137 U. S., 98; *Ayers* v. *Watson*, 137 U. S., 584; *Van Stone* v. *Stillwell and B. Mfg. Co.*, 142 U. S., 128; *Blitz* v. *United States*, 153 U. S., 308.

X.

The tenth assignment is as follows:

> That the judge erred in overruling defendant's arrest of judgment.

The motion in arrest of judgment is as follows:

> Now comes the defendant, by his attorneys, Cherry & Cherry, and moves the court to arrest the judgment in this cause for the following reason:
>
> That during a portion of the time of the trial of said defendant he did not have a constitutional jury in the box; that the juror Louis Gronosky was permitted by the court to be sworn and to act as interpreter four times for two of the witnesses for the people; that during the time said juror was so acting

there were but eleven jurors to act in said cause, as shown by the records in this cause. (Rec., p. 419.)

This assignment is in effect the same as the eighth, and is insufficient for the reasons above set out.

XI.

The eleventh assignment is as follows:

That the court erred in refusing to set aside the verdict of the jury, because the evidence is not sufficient to warrant or justify the verdict, and because the evidence is contrary to the verdict. (Rec., p. 441.)

It is not assignable as error that the evidence does not warrant the verdict. (*Crumpton* v. *United States*, 138 U. S., 361; *Wilson* v. *Everett*, 139 U. S., 616; *Moore* v. *United States*, 150 U. S., 57, 61.)

J. M. DICKINSON,
Assistant Attorney-General.